

*United States Court of Appeals
for the
District of Columbia Circuit*



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

632
No. 19,673

JOHN QUINN AND RIGGERS AND MACHINERY
ERECTORS, LOCAL 575,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 28 1966

No. 19,686

Nathan J. Paulson
CLERK

DON CARTAGE COMPANY, a Michigan Corporation,
and MICHIGAN CARTAGEMEN'S ASSOCIATION,
HEAVY HAULERS' DIVISION,

Petitioners,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

Petition to Set Aside Order of The National Labor Relations Board and
For Direction by Court to Board That Board Render Decision and order
in Accordance With National Labor Relations Act As Amended

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JOINT APPENDIX

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JOINT APPENDIX

[Filed October 19, 1965]

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN QUINN AND RIGGERS AND
MACHINERY ERECTORS, LOCAL 575,

Petitioners,

v.

* * * * * No. 19,673

NATIONAL LABOR RELATIONS BOARD,

Respondent.

* * * * *

DON CARTAGE COMPANY, a Michigan
Corporation and MICHIGAN CARTAGEMEN'S
ASSOCIATION, HEAVY HAULERS' DIVISION,

Petitioners,

v.

* * * * * No. 19,686

NATIONAL LABOR RELATIONS BOARD,

Respondent.

* * * * *

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38(k) of the Rules of this Court, the parties to the above-entitled consolidated cases, subject to the approval of the Court, hereby stipulate and agree as follows with respect to the issue and joint appendix herein:

I. THE ISSUE

The parties have conferred with respect to the issue presented by this case but have not reached agreement. It is the conclusion of the parties that a conference before the Court would not result in agreement. Therefore, the respective positions of the parties with respect to the issue presented are set out below:

A. The petitioners maintain that the issue to be decided is:

Whether the Board, in a proceeding under Section 10(k) of the National Labor Relations Act as amended, properly, after hearing and the making of the record, issued a Decision and Order which was not dispositive of the jurisdictional dispute involved in accordance with a mandate of the Act as interpreted by the Supreme Court in N.L.R.B. v. Radio and Television Broadcast Engineers Union (Columbia Broadcasting System), 364 U.S. 573, and as stipulated to by all the parties on the record and which further refers to matters not before the Board.

B. The Board maintains that the issue to be decided is:

Whether the Board, in an unfair labor practice proceeding arising under Section 8(b)(4)(D) of the Act, properly approved a settlement agreement and quashed a notice of hearing issued pursuant to Section 10(k) of the Act.

II. JOINT APPENDIX

1. The relevant portions of the record in this case shall be reduced to a joint appendix comprising the materials the parties designate, with each party bearing the cost of printing the material contained in its designation and necessary mailing charges.

2. The printed joint appendix shall be filed in this Court at the same time petitioners' reply briefs are due to be filed. Petitioners shall serve upon the Board their designations of the portions of the record which they wish to appear in the joint appendix on or before November 2, 1965. The Board shall serve upon petitioners its designation of the portions of the record which it wishes to appear in the joint appendix on or before November 17, 1965.

3. Petitioners shall designate, and shall bear the expense of printing, the Board's decision and order, this stipulation, and the Court's order thereon. The printing of the joint appendix shall be the responsibility of the Board.

4. Fifth (50) copies of the appendix shall be printed under this stipulation; the required number of copies to be filed with the Court and the remaining copies to be divided equally among the parties to the stipulation.

Dated at Washington, D. C.,
this 19th day of October, 1965

/s/ Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD
/s/ George T. Roumell, Jr./ham
Attorney for Petitioners in No. 19,686
/s/ Ronald Rosenberg
Attorney for Petitioners in No. 19,673

Before: McGowan, Circuit Judge, in Chambers.

PREHEARING ORDER

Counsel for the parties in the above-entitled cases having submitted their stipulation pursuant to Rule 38(k) of the General Rules of this Court, and the stipulation having been considered, the stipulation is approved, and it is

ORDERED that the stipulation shall control further proceedings in these cases unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix herein.

Dated: Oct. 28, 1965

/s/ C. McG.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

MILLWRIGHTS' LOCAL NO. 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; CARPENTERS' DISTRICT COUNCIL OF DETROIT, WAYNE AND OAKLAND COUNTIES AND VICINITIES, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

AND

DON CARTAGE COMPANY

MILLWRIGHTS' LOCAL NO. 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; CARPENTERS' DISTRICT COUNCIL OF DETROIT, WAYNE AND OAKLAND COUNTIES AND VICINITIES, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; DETROIT AND WAYNE COUNTY, OAKLAND AND MACOMB COUNTIES, MICHIGAN, BUILDING AND CONSTRUCTION TRADES COUNCIL

(Don Cartage Company)

and

JOHN QUINN, an individual

CASES NOS.
7-CD-97(1)
(2)

CASES NOS.
7-CD-97(3)
(4)
(5)

SETTLEMENT AGREEMENT

The undersigned labor organizations (Millwrights' Local No. 1102 and Carpenters' District Council of Detroit, etc., herein jointly called the Unions) and the undersigned Acting Regional Director for the Seventh Region of the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

1. Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities and Millwrights' Local No. 1102, both affiliates of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO, are not entitled by means proscribed by Section 8(b)(4)(i) and (ii) of the National Labor Relations Act, as amended, to force or require Don Cartage Company to assign certain disputed job tasks performed by it, involving the erection and installation of machinery and equipment at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan, to employees who are members of, or represented by, Millwrights' Local No. 1102 rather than to employees who are members of, or represented by, Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, to whom the work was assigned by Don Cartage Company. The Unions further withdraw any request for assignment of said work performed by Don Cartage Company at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan.

2. Nothing contained herein shall constitute an admission that the Unions have violated the Act or alter the legal effect of any existing agreements between the Unions and any person, labor organization, or corporation or in any way abridge or diminish the rights of the Unions to engage in all lawful activities for the protection and advancement of their members and those they otherwise represent.

3. There are presently, as the result of the agreement contained herein, no competing claims necessary to establish a dispute cognizable under Section 10(k) of the Act, and, accordingly, the Board is requested to issue and serve upon any party to this proceeding who has not

executed this agreement an Order to Show Cause why the Notice of Hearing issued previously herein by the undersigned Acting Regional Director should not be quashed and thereafter issue a decision and order quashing the Notice of Hearing herein.

Executed at Detroit, Michigan, on the dates indicated below.

May 20, 1965

/s/ Jerome H. Brooks
Acting Regional Director, Region 7,
National Labor Relations Board

CARPENTERS' DISTRICT COUNCIL OF
DETROIT, WAYNE AND OAKLAND
COUNTIES AND VICINITIES, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO

May 14, 1965

By: /s/ L. M. Weir

Title: Secy; Treas.

MILLWRIGHTS' LOCAL NO. 1102, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO

May 18, 1965

By: /s/ George Horn

Title: Business Representative

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION NO.
575, INTERNATIONAL ASSOCIATION OF
BRIDGE, STRUCTURAL AND ORNAMENTAL
IRON WORKERS OF AMERICA, AFL-CIO

May , 1965

By:

Title:

DON CARTAGE COMPANY

May , 1965

By:

Title:

MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS DIVISION

May ___, 1965

By:

Title:

NOTICE TO SHOW CAUSE

A hearing was held on various dates from April 30, 1964, through July 31, 1964, in the above-entitled proceeding.

Thereafter, on May 20, 1965, Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and the Acting Regional Director for the Seventh Region entered into a Settlement Agreement requesting the Board to issue and serve upon any party to this proceeding who has not executed this agreement an Order to Show Cause why the Notice of Hearing issued previously herein should not be quashed and, thereafter, a decision and order quashing the Notice of Hearing issue.

The Board having duly considered the matter,

NOTICE IS HEREBY GIVEN that Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, Don Cartage Company, and Michigan Cartagemen's Association, Heavy Haulers Division, and John Quinn show cause, in writing, filed with the Board in Washington, D. C., on or before June 10, 1965, (with affidavit of due service upon the parties to this proceeding) why the Board should not approve the Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing.

Dated, Washington, D. C., May 28, 1965

By direction of the Board:

Ogden W. Fields

Executive Secretary

[Rec'd. June 17, 1965, N.L.R.B.]

REQUEST OF DON CARTAGE AND MICHIGAN
CARTAGEMEN'S ASSOCIATION FOR ORAL
ARGUMENT

Comes now Don Cartage Company and the Michigan Cartagemen's Association, Heavy Haulers Division, and hereby requests oral argument before the Board in response to the Order to Show Cause. Although recognizing that it is unusual for the Board to grant oral argument on a matter, these employers believe that in view of a 3842 page record, some 34 days of trial and the expenditure of large sums of money to bring this matter to the attention of the Board plus the continuing jurisdictional dispute between the unions involved, it is urgent that an oral argument be had so that the Board will completely understand the employers' point of view as to why a jurisdictional award should be issued and the alleged ex parte settlement agreement be refused.

Respectfully submitted,

/s/ George T. Roumell, Jr.
Attorney for Don Cartage Company
Employer, and
Michigan Cartagemen's Association.
Heavy Haulers Division,
Intervening Employers
3400 Penobscot Building
Detroit, Michigan 28226
Woodward 2-8710

Dated: June 16, 1965

[Rec'd. June 17, 1965, N.L.R.B.]

ANSWER OF EMPLOYER DON CARTAGE AND MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS' DIVISION, TO ORDER TO SHOW CAUSE AND REASONS IN SUPPORT THEREOF WHY NOTICE OF HEARING IN ABOVE CASES SHOULD NOT BE QUASHED AND WHY BOARD SHOULD, CONSISTENT WITH CBS, AWARD WORK IN DISPUTE

COMES NOW DON CARTAGE, the employer in the above cause and the MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS' DIVISION, the intervening employers in the above cause, and in answer to the Order to Show Cause issued by the Board in the above matter set

forth herein with all the vigor and vitality they can muster, the following cogent reasons why after a year of litigation and the expenditure of effort, time and large sums of money the Board should not accept an ex-parte settlement which ignores the CBS mandate and does nothing to solve a serious continuing jurisdictional dispute in Michigan and why the Board should award the work consistent with CBS.

INTRODUCTION

By necessity this answer to show cause will incorporate references to the 3981 page record made in the above cases, (hereinafter referred to as "record"), the 140 page brief filed by counsel for Don Cartage Company and the Michigan Cartagemen's Association (hereinafter referred to as "employers' brief"), plus certain other information that will be incorporated herein by reference or appendices. For convenience sake, most reference will be made to the employers' brief as that brief pinpoints pages of the record that are applicable to the statements made therein.

I

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT PERMITS THE MILLWRIGHTS BY ALLEGEDLY LEGAL BOARD PROCEDURES TO SUCCESSFULLY CIRCUMSCRIBE AND NULLIFY 8(b)(4)(i)(ii)(D) AND THE PROVISIONS FOR 10(k) HEARINGS.

There is no question that the ex-parte or unilateral alleged settlement agreement permits Millwrights Local 1102, The Carpenters' District Council and The Detroit Building Trades Council (hereinafter referred to totally as "Millwrights Local 1102"), by allegedly legal Board procedures to successfully circumscribe and nullify 8(b) 4(i) (ii)(D) and the provisions for 10(k) hearings. Look what happened in the instant case? The facts supported by references to the record are set forth in detail at pages 10-20 of the employers' brief. The facts clearly indicate that the Millwrights by illegal pressure and illegal picketing of Don Cartage violated 8(b)(D). Faced with the illegal pressure of the Millwrights and their illegal picket line Don Cartage had less than eight hours to reassign to Millwrights Local 1102 work at the Ternstedt Division Plant of General Motors in Detroit, which Don Cartage had

already assigned to the members of Riggers Local 575, its certified Union, with whom it had a contract, or lose a half million dollar specialty rigging job. Ternstedt was irate at Don Cartage for as a result of the Millwrights' illegal picket line, no tradesmen would work at Ternstedt, thereby causing a tightly scheduled work program to be shut down completely. Caught between the devil and the deep blue sea, Don Cartage, thanks to the Millwrights' illegal activity, ended up losing the half million dollar contract. The Millwrights got what they wanted, to-wit, the Riggers off the job.

Now after a year of litigation and the great expenditure of effort, time and money and after the Millwrights have illegally accomplished their purposes, the Millwrights now withdraw, by means of an alleged settlement, their request for the assignment of the work. Why not? The Millwrights can by illegal means, take work away from the Riggers even before the Board could possibly make an investigation, let alone issue a 10(k) hearing notice.

What is to stop the Millwrights from engaging in this strategy again? All Millwrights have to do is to engage in illegal pressure, picketing or other activity, and by doing so, either force the specialty Rigging contractor, a member of the Michigan Cartaglemen's Association, off the job involved or force him to disavow his Board certification and contract with the Riggers and reassign the work to Millwrights. After accomplishing their desired result, the Millwrights could, as they are attempting here, run to the Board and propose an ex-parte Order withdrawing the request for the work assignment and disclaiming violation of the Act.

Neat trick if it works. It circumscribes 8(b)(4)(i)(ii)(D) and 10(k). It makes a mockery out of an Act of Congress. It ridicules the mandate and direction set forth by the Supreme Court in NLRB v. Radio and Television Broadcast Engineers Union, Local 1212, 1 BEW, 364 U.S. 573 (1961) (hereinafter referred to as CBS).

What's more, as will be illustrated in point III, this Michigan Millwright-Rigger jurisdictional dispute is a continuing repetitive

situation even to this very day. To ask the Board here, with a repetitive situation, to recognize an alleged settlement agreement is an insult to the Board collectively and individually for it in effect urges the Board to disregard its statutory duty as set forth in CBS to award the work. It leaves the employers caught between two competing unions without a Board remedy.

II.

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT DOES NOT EVEN REFER TO THE INTERVENING EMPLOYER ASSOCIATION, THE MICHIGAN CARTAGEMEN'S ASSOCIATION, WHO HAS A VITAL INTEREST IN THE OUTCOME OF THIS DISPUTE AS IT IS THE COLLECTIVE BARGAINING AGENT FOR DON CARTAGE COMPANY AND TEN OTHER SPECIALTY RIGGING CONTRACTORS IN MICHIGAN.

No where in the ex-parte alleged settlement agreement or in the Order to Show Cause issued by the Board is there any mention of the employer association in interest here, the Michigan Cartagmen's Association, Heavy Haulers Division. After the notice of the 10(k) hearing was served in this case, the Michigan Cartagmen's Association, Heavy Haulers Division, on April 15, 1964, filed a motion to intervene which was granted by the Acting Regional Director on April 16, 1964. A copy of the motion is attached hereto as Appendix 1. The Association intervened because it represented 10, now 11, (Dobson Heavy Haul, Inc., of Bay City, Michigan, a previous member, has rejoined the Association since the close of the hearing, and the Association has Dobson's Power of Attorney) specialty rigging contractors engaged in the specialty rigging industry in the State of Michigan, most, if not all, of whom have been and are now plagued by this continuing jurisdictional dispute between the Millwrights and Riggers. (See part III of this answer.) The Association has at least a 17 year history of bargaining for the entire group with Riggers Local 575 and as a result of the Board's decision in Machinery Movers and Erectors Division, Michigan Cartagmen's Association, Riggers Local 575, 117 NLRB No. 233, the Riggers were certified by the Board as the collective bargaining agent to deal with the Association. (Employers' brief at pages 20-21, 82-83, 90-94.)

Pursuant to this certification, during the time of the hearing and presently, the Association has a contract with Local 575 which is binding on all of its members, including Don Cartage. Furthermore, as pointed out in the employers' brief at 123 through 127, the record clearly indicates that 90% of the work in dispute in Michigan is done by members of the Michigan Cartagemen's Association, Heavy Haulers Division. Certainly, the Acting Regional Director on April 16, 1964, was absolutely correct when he permitted this Association to intervene. This jurisdictional dispute is a continuing one, not only affecting Don Cartage, but all the members of the Association. This is the reason why the Association intervened. The membership, including Don Cartage, wants relief from this continuing illegal harassment. They want labor peace. They have abided by a Board certification; they have bargained in good faith and executed labor contracts. They deserve consideration by the Board in attempting to obtain labor peace.

The deliberate ignoring of the Association in the ex-parte alleged settlement and the Order to Show Cause is not practical and is not feasible for it does not award the work in dispute, but instead condones a continuing jurisdictional dispute leaving at least 11 specialty rigging contractors in Michigan caught between two competing unions and as such, jeopardizes the investments in excess of at least one million dollars of these contractors. Again, all this ex-parte alleged settlement is, is an attempt to circumscribe the Act and lull the Board into ignoring the CBS mandate.

III.

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT IGNORES THE FACT THAT THE DISPUTE INVOLVED IS A CONTINUOUS ONE, AND THAT AS A RESULT, SUCH AN AGREEMENT WOULD ENCOURAGE LABOR WAR RATHER THAN LABOR PEACE.

Since World War II there has developed a continuous jurisdictional dispute between Riggers Local Union 575 and Millwrights Local Union 1102 covering at least a 19 county region in Michigan (the geographical jurisdiction of Millwrights Local 1102), if not a 34 county

region in Michigan (the geographical jurisdiction of Riggers Local 575). (See pages 3-5, employers' brief for geographical jurisdiction of Unions involved.) Some of the long history of the dispute is set forth at 2282-2315 of the record. The dispute covers the assignment of work between these two Unions by specialty rigging contractors in the Michigan area, to-wit, Don Cartage Company and the other 10 members of the Michigan Cartagemen's Association. The nature of the exact dispute is set forth at pages 6 and 7 of the employers' brief. (Also see pages 41-42, 3685-95, 3719 of the record.)

The dispute has been a continuous dispute. Twice it has been before the full Board prior to the CBS decision, to-wit, Millwrights Local 1102 (Don Cartage Company), 120 NLRB 101 (1958); Millwrights Local 1102 (General Riggers and Erectors, Inc.), 127 NLRB 26 (1960). Indirectly it was the subject of a certification hearing by the Board (Riggers Local 575, 117 NLRB No. 233, Case No. 7-RM-159 (1957)). The current history of the dispute vividly illustrates that this jurisdictional dispute is a continuing one. The present case originated in March, 1964. On May 20, 1964, Dobson Heavy Haul, Inc., another specialty rigging contractor of Bay City, Michigan, and now a member of Michigan Cartagemen's Association, filed a charge against the Millwrights who allegedly threatened Dobson when Dobson made an assignment to Riggers. This was Case No. 7-CD-103. In September, 1964, this case was withdrawn because the employer, if not all parties, realized or hoped that the decision made in this case, 7-CD-97(1)-(5), would govern 7-CD-103.

Since the hearing ended on July 31, 1964, in the current case, the undersigned as attorney for the Michigan Cartagemen's Association, Heavy Haulers Division, has received calls and inquiries from at least 8 members of the Association on approximately the following dates concerning claims and pressures put upon them by Millwrights to attempt to get them to re-assign work already assigned to Riggers Local 575, covering jobs in Detroit, Pontiac, Flint, Midland and Saginaw, Michigan: International Industrial Contracting Corporation

(August 10-12, 1964); General Riggers and Erectors, Inc., (November 24-27, 1964); Turner Cartage Company (November 30, 1964); Gale Rigging and Erecting, Inc., (November 24, 1964); Dobson Heavy Haul, Inc., (January, 1965, April, 1965); Don Cartage Company (May 26, 1965); Detroit Riggers and Erectors, Inc. (Fall of 1964); Thomas Goodfellow, Inc. (January 27, 1965, March 23, 1965, May 6, 1965, May 25, 1965, June 15 and 16, 1965).

These times are approximate and are based upon the time records of the undersigned. It is interesting to note that while preparing this Answer on Tuesday night, June 15, 1965, and at 8 o'clock in the morning on June 16, 1965, Thomas Goodfellow, Inc., reported to counsel that a picket line had been threatened against Thomas Goodfellow, Inc.

At least from the employers' standpoint these disputes did not result in charges, for the reason, at least in part, that the Millwrights did not picket, and the employer, rather than engage in additional litigation, was awaiting the outcome of the current case - 7-CD-97(1)-(5)

However, this counsel has brought at least 3 charges on behalf of members of the Association in the last 6 months against Millwrights Local 1102 where picketing in fact has been involved. Case No. 7-CD-124(2) was brought by Dobson Heavy Haul, Inc. in January, 1965. This case resulted in picketing at the Bay City Chevrolet Plant where Dobson Heavy Haul was doing work for the Loren Company. A settlement was reached although Dobson is now claiming that this settlement agreement has been violated by the Millwrights in a case subsequently filed by Dobson, to-wit, 7-CD-129, when Dobson was picketed on April 26, 1965, at the Dow Chemical Plant by members of the Millwrights Local 1102, resulting in a thousand tradesmen refusing to work on a construction project for Dow Chemical Company. This latter case is now pending in the Appeal Section of the General Counsel's office. (Attached hereto as Appendix II is a copy of the Appeal sent to the General Counsel by Dobson Heavy Haul explaining its position.) Likewise, there is now pending for decision by the Acting

Regional Director Case No 7-CD-132, wherein Thomas Goodfellow, Inc., a specialty rigging contractor, charged on May 13, 1965 that the Millwrights were picketing in an attempt to force a re-assignment of the work from Riggers to Millwrights. Finally, although not involving Local 1102, Riggers Local No. 575 and Local 1132 of the United Brotherhood of Carpenters of Alpena, Michigan, are the subject of a 10(k) hearing as a result of the charge brought by Detroit Riggers and Erectors, Inc., involving the same dispute between Millwrights and Riggers. (Case No. 7-CD-130).

The above recitation of incidents in the last year, including the incident of this very morning, June 16, 1965, illustrates vividly that this dispute is a continuing one. Paragraph 3 of the alleged ex-parte agreement stating that there are "no competing claims necessary to establish a dispute" is just not true as indicated in the current, let alone the past experience of the employer. This is a continuing dispute. The employer pleads for a decision from the Board. The Act and the Supreme Court says that the employers are entitled to such a decision.

IV.

THE RECORD IN THIS CASE CLEARLY SHOWS THAT THE ATTORNEYS FOR THE MILLWRIGHTS BY THEIR STATEMENTS ON THE RECORD MADE PREVIOUSLY CLEARLY REPUDIATED THE CURRENT EX-PARTE ALLEGED SETTLEMENT AGREEMENT.

Bluntly speaking, the employer believes that the attorney for the Millwrights and the Building Trades Council and their clients know that the current proposed ex-parte alleged settlement agreement is not the way to settle this dispute and really know that in fact even before the agreement is adopted it has, at least figuratively speaking, been repudiated by the Millwrights.

On the second day of the hearing in the current case Mr. Rolland O'Hare, attorney for Millwrights 1102, at page 63 of the record agreed that the Board should not limit its determination to the Ternstedt dispute but agreed with counsel for the employers and counsel for the Riggers as well as Mr. Prebenda, counsel for the Building Trades, that the Board should make a determination awarding the work in dispute to

all future disputes where Riggers Local 575 and Millwrights 1102 are operating in conjunction with one another in their respective geographical areas. The following is found at page 63 of the record:

"MR. O'HARE: I agree that the Board should issue a determination which binds — I am sorry — which deals with all of these parties on all of the kind of work that is in dispute here.

HEARING OFFICER: In the whole area. In other words, you don't want it confined to just Ternstedt Division?

MR. O'HARE: I don't want it confined just to Ternstedt Division. I would have to know what you and Mr. Bennett mean by the whole area before I would be willing to limit it that far."

At page 64 Mr. O'Hare made the following statement:

"HEARING OFFICER: I didn't say beyond that area.

MR. O'HARE: What I was afraid of you were limiting it.

MR. BENNETT: No.

HEARING OFFICER: No, I was not limiting it.

MR. O'HARE: I think it should apply among the parties represented in this hearing, whenever those parties may be found operating in conjunction with one another.

HEARING OFFICER: Wherever?

MR. O'HARE: Wherever."

At page 63 Mr. Prebenda agreed. The undersigned agreed, so did Mr. Bennett, the attorney for Riggers Local 575.

The undersigned knows for a fact that Mr. George Horn, the Business Representative for Millwrights 1102, was present during these statements.

To make such a statement on May 1, 1964 and thus permitting the parties to develop a record of 3981 pages and spend some 34 days in trial in hopes that the Board would make an award and then turn around on what may have been, the eve of the award (although counsel has no knowledge of this), and propose an ex parte settlement agreement, is just plainly unfair and not in the interest of justice or labor peace. Figuratively speaking, particularly in view of the continuing

nature of the dispute and the previous statements of counsel on the record, the employer can argue, as it is here, that the agreement has been repudiated before it has been approved.

V.

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT NOT ONLY IGNORES PREVIOUS STATEMENTS MADE BY THE MILL-WRIGHTS' COUNSEL BUT IGNORES THE TIME AND EFFORT EXPENDED BY ALL PARTIES TO ATTEMPT TO OBTAIN A BINDING AWARD.

Let's examine what happened here' On May 1, 1964, counsel for the Millwrights stated on this record that the Board should make an award of the work in dispute between Millwrights and Riggers that will affect all future such disputes in the Michigan area. The Riggers' counsel agreed. The employers' counsel agreed. Thereafter, a great deal of time, effort and money was spent to present a detailed and adequate record to the Board with this purpose in mind.

The employers can only speak for themselves, but attached hereto marked Appendix III is a bill for \$3,600.40 for a record consisting of 3981 pages. The affidavit of counsel attached hereto and marked Appendix JV verifies that his time records indicate that he spent in excess of 525 hours on this case, plus approximately another 100 hours on other similar disputes subsequent to this hearing. At the hearing virtually all the operating heads of the members of the Michigan Cartagermen's Association testified, including 3, to-wit, John Blue (Don Cartage); Blair Martoe (Nor-West); and John Metzger (General Riggers), who spent at least two days or more on the stand Don Jardine of International Industrial made 3 appearances as a witness A number of Rigger employees of the employers also appeared. This represented loss production and time to the employers

The employer has expended all this time, effort and money to achieve labor peace by obtaining a Board award of the disputed work. The ex-parte alleged settlement ignores this effort. It makes it wasted effort. The efforts of the Board thus far in this case will be wasted. It is far too late in the game, consistent with justice and fair play, to permit

one union by the strategy employed here, to ignore the rights and interest given the employers and another Union in this matter under the Act and by the Supreme Court in CBS.

VI.

THE ALLEGED SETTLEMENT AGREEMENT IS AN EXTRA-ORDINARY PROCEDURE NOT JUSTIFIED BY THE RULES AND REGULATIONS PUBLISHED BY THE BOARD.

It has never been clear to the employer exactly on what authority the Acting Regional Director was acting when the ex-parte alleged settlement agreement was submitted to the Board. We presume that the reference is made to Rule 102.93 which is as follows:

"SEC. 102.93 Alternative procedure. - If, either before or after service of the notice of hearing, the parties submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, the parties submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw the notice of hearing if notice has issued. If it appears to the regional director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable."

(Emphasis added)

The key to the above rule is, of course, the underlined words "the parties" The employers have never submitted any evidence of any settlement. As far as we know, neither has Riggers Local 575 Therefore, 102.93 is just not applicable nor is any other rule published by the Board.

Rule 102.51 provides for settlement "prior to hearing". The hearing has long been concluded. We also submit that not even a Trial Examiner can accept a settlement after the matter has been transferred to the Board. See Section 102.35.

It may be that there are some rules within the internal workings of the Board that permit this type of procedure, but in view of what has already been submitted, we believe that this procedure is highly extraordinary in this matter and should not be employed because it is not conducive to labor peace

VII.

THE EMPLOYERS SINCERELY BELIEVE THAT AN AWARD WILL GO A LONG WAY IN ESTABLISHING LABOR PEACE IN THEIR INDUSTRY AND FOR THIS REASON OPPOSE AN ALLEGED EX-PARTE SETTLEMENT AGREEMENT WHICH OBVIOUSLY DOES NOT MAKE AN AWARD.

Naturally, the employers believe that their assignments of the work in dispute to members of Riggers Local 575 should be affirmed by the Board. But regardless, the employers believe emphatically that an assignment should be made to one or the other of the competing groups in order to end the harassment that Don Cartage and the other members of the Michigan Cartagmen's Association are experiencing in the Michigan area by Millwrights. It is the confirmed belief of the employer that an assignment of the disputed work by the Board will lead to labor peace in the rigging industry in Michigan heretofore unknown. However, it is again emphasized that it is the employers' desire that the work be awarded to Riggers, members of Riggers Local 575 for all future work of this type in the 34 counties of Michigan where the jurisdiction of Millwrights Local 1102 and Riggers 575 concur.

VIII.

AN EX-PARTE ALLEGED SETTLEMENT AGREEMENT BASED UPON THE EMPLOYERS' PAST EXPERIENCE IS OF NO VALUE AND IS NOT CONDUCIVE TO LABOR PEACE.

A settlement of the type proposed is literally not worth the paper it is written on and this has been proven by virtue of Case No. 7-CD-124(2) wherein Dobson Heavy Haul, Inc., a member of the Michigan

Cartagemen's Association filed a charge against Millwrights Local 1102 where said Local was engaged in picketing Dobson Heavy Haul at the Chevrolet Plant of General Motors Corporation at Bay City, Michigan, in January, 1965 while this case was pending. Because the employer did not want to go through the expense of trying another 10(k) and because the employers felt that 7-CD-97(1-5) would solve the problem, a settlement was entered into which provided a notice in part as follows:

"WE WILL NOT threaten, coerce or restrain Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other person engaged in commerce, with an object of forcing or requiring Lorne Inc., or General Motors Corporation, Chevrolet Motor Division, to cease doing business with Dobson Heavy Haul, Inc.

WE WILL NOT in any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, or by any like or related actions or conduct, or by permitting such to remain in existence or effect, engage in or induce or encourage any individual employed by Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other person engaged in commerce or in an industry affecting commerce, in the course of his . . ."

A little over 60 days later the same employer, Dobson Heavy Haul, Inc., was again picketed by Millwrights at Dow Chemical resulting in 1,000 tradesmen refusing to work. This latter incident resulted in Case No. 7-CD-129. Appendix II is a request for review of the Acting Regional Director's dismissal of this charge, explaining in detail the facts of 7-CD-124(2) and the facts of 7-CD-129. The Millwrights deny that they have violated the settlement agreement entered into on February 19, 1965. However, it is submitted that the agreement was violated. Thus, in the employers' view a settlement agreement with the Millwrights, particularly, an ex-parte agreement, does not bring labor peace to the employer. An award pursuant to CBS will!

IX.

AS A MATTER OF PUBLIC POLICY. IT IS SUBMITTED THAT THE BOARD SHOULD NOT AT THIS STAGE ENTERTAIN AN EX-PARTE SETTLEMENT AGREEMENT BECAUSE OF THE TIME, EFFORT AND MONEY SPENT BY THE PARTIES ATTEMPTING TO OBTAIN A BOARD AWARD

The employer, let alone the unions have spent a great deal of time, effort and money to prosecute this case. To now tell the employer after spending all this money that they are not going to have a decision on the merits of the case certainly presents a serious public relations problem for the Board and a questionable attitude of laymen toward the Board processes in our society. This undersigned lawyer, as a member of the Bar who has the privilege of practicing before this agency feels obliged to point this fact out toward the Board.

This is not a question of telling a client that he has either won or lost a case but rather, presents a problem of saying that an agency charged by an Act of Congress and particularly recently charged by the Supreme Court of the United States refuses after some 34 days of hearing, the spending of thousands of dollars of time and money and after over a year of litigation refuses to render a decision. This just cannot be explained to laymen.

X

THE ALLEGED EX-PARTE SETTLEMENT AGREEMENT IS CONTRARY TO BOARD DECISIONS ANNOUNCED AS RECENTLY AS MAY 26, 1965, IN THAT IT ASSUMES THIS MATTER IS MOOT, WHEN, IN FACT, THE DISPUTE IS A CONTINUING ONE.

The ex-parte alleged settlement agreement assumes that the jurisdictional dispute is moot because the Ternstedt job has ended. But as previously pointed out, the jurisdictional dispute in Michigan between Millwrights Local 1102 and Riggers Local 575 is a continuing one even to this very day, June 16, 1965. On May 26, 1965 the Board announced its decision in Plumbers and Pipefitters Union (Bernard Pipeline Company), 152 NLRB No 98, where in response to the argument which the Millwrights 1102 are apparently making now that the job involving the dispute has ended, the Board said.

"The Board has held that a jurisdictional dispute is not moot, even though the particular work has been completed, where there is evidence of similar disputes in the past and nothing to indicate that such disputes will not occur in the future. In the instant case, the Company has every expectation of performing work again in the areas of geographical jurisdiction covered by Respondents. Accordingly, we find that the dispute is not moot and shall make the assignment of the disputes work. * * *"

And back in 1962 the Board also took this very same position in International Union of Operating Engineers, Local 66 (Frank P. Badolato and Son), 135 NLRB 1392 when it said at 1401:

"We do not agree that the case is moot, particularly where, as here, the evidence discloses a number of similar disputes in the recent past and there is no evidence that similar disputes will not occur in the future."

The plain fact of the matter consistent with current Board policy, the Millwright-Rigger jurisdictional dispute is far from moot. An award from the Board should be forthcoming.

XI.

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT IS INCONSISTENT WITH AT LEAST THE INITIAL DESIRE OF ALL PARTIES HERETO TO HAVE THE WORK IN DISPUTE AWARDED FOR THE ENTIRE MICHIGAN AREA INVOLVED.

As already pointed out, on May 1, 1964, counsel for the Millwrights agreed with the Riggers' attorney and the employers' attorney that the work in dispute should be awarded for future work in the Michigan area involved. Counsels were not unreasonable in expecting the Board to make such an award. In International Union of Operating Engineers, Local 66, AFL-CIO (Frank P. Badolato and Son), 135 NLRB 1392 (1962), the award applied to Badolato's "plastering contracting operations within the tri-state area" in which the company operates.

In the recent case of International Association of Bridge Structural & Ornamental Iron Works, Local 474 (Structural Concrete Corporation), 146 NLRB No. 152 (1964), this Board said at page 6:

" Since there is a strong probability that similar disputes may occur in the future, we hold that the determination in this case applies, not only to the job in which the dispute arose, but to all similar work done or to be done by Structural Concrete Corporation in which it uses its own crew to do the erection work. In making this determination, we are assigning the disputed work to employees represented by the Steelworkers, but not to that labor organization or its members."

And on April 29, 1965 in Local Union No 272, et al (Prestress Erectors, Inc.), 152 NLRB 221, the award was made to cover an area in which the employer was operating

The employers were operating in at least the 19 counties covered by Millwrights Local 1102 and the 34 counties covered by Riggers 575 and for this reason consistent with past Board decisions, the Board should make an award beyond the immediate dispute, particularly when the parties at one time agreed to such an award and particularly because of the continuance of the dispute such an award is necessary.

XI.

THE ALLEGED EX-PARTE SETTLEMENT AGREEMENT IS JUST NOT PRACTICAL.

Let's be practical. The alleged ex-parter settlement agreement will solve nothing. It only will result in more charges being filed in the future based upon this continuing jurisdictional dispute. It will probably result in another extensive hearing. There is absolutely no reason under these circumstances why the Board should condone an alleged settlement agreement which will only lead to future and extensive litigation. An award here will go a long way to terminate this litigation and free the Seventh Region for other matters.

XII.

THE EX-PARTE ALLEGED SETTLEMENT AGREEMENT IS INCONSISTENT WITH CBS.

Under these circumstances counsel would be remiss if he did not point out to the Board the duty and mandate that the Board has under 10(k)

pursuant to the decision in CBS. We call the Board's attention to the last paragraph of the Supreme Court Decision in CBS which is as follows:

"We conclude therefore that the Board's interpretation of its duty under § 10(k) is wrong and that under that section it is the Board's responsibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision. Having failed to meet that responsibility in this case, the Board could not properly proceed under § 10(c) to adjudicate the unfair labor practice charge."

It is the employer's position that an award should be issued by the Board. The only settlement agreement that would be appropriate would be a formal order assigning the work and all future similar work in the 34 county area in Michigan to members of Riggers Local 575

All the employer asks the Board to do is to make its award. Nothing more, nothing less. We believe this is a fair request under all the circumstances.

SUMMARY

The jurisdictional dispute is a continuing one. All the parties to this litigation including the Millwrights at least at one time admitted that they wanted an award from the Board awarding all future work in dispute in the 34 county Michigan area. The parties spent a great deal of time, effort and money in presenting the case to the Board. The employers believe that a Board award would lead the way to labor peace between the Millwrights and the Riggers. The matter is not moot. It is entitled to an award pursuant to CBS. Finally, as a matter of public relations, we would respectfully suggest that it is not in the interest of fair play after a matter has been completely litigated to refuse to render an award.

Respectfully submitted,

/s/ George T. Roumell, Jr.

* * *

June 16, 1965

[Affidavit of Service]

Attorney for Employers DON CARGAGE COMPANY and MICHIGAN CARGEMEN'S ASSOCIATION

MOTION TO INTERVENE

MICHIGAN CARTAGEMEN'S ASSOCIATION, Heavy Haulers Division, hereinafter called the ASSOCIATION, in accordance with the Rules and Regulations of the National Labor Relations Board, Section 102.29, herewith move to intervene in the above captioned proceedings, a hearing on which having been set for 9:30 A.M., April 22, 1964.

As grounds for intervention in these proceedings, the ASSOCIATION states as follows.

1) The ASSOCIATION is a non-profit Michigan corporation having been incorporated in 1948, and is located at 11000 W. McNichols, Detroit, Michigan

2) The ASSOCIATION consists of ten (10) employer members, one of which is DON'S CARTAGE COMPANY, and each such member has given the ASSOCIATION a broad Power of Attorney in labor relations matters.

Members of the ASSOCIATION are: DON'S CARTAGE COMPANY, 5150 16th St., Detroit 8; BARNEY'S CARTAGE COMPANY, 4500 Lawton, Detroit 8; DETROIT RIGGERS & ERECTORS, INC., 11480 Shoemaker, Detroit 13; GENERAL RIGGERS & ERECTORS, INC., 1111 Beaufait, Detroit 7; THOMAS GOODFELLOW, INC., 5201 12th St., Detroit 8; GALE INDUSTRIAL RIGGING & ERECTING CONTRACTING CO., INC., 7145 Tireman, Dearborn; INTERNATIONAL INDUSTRIAL CONTRACTING COMPANY, 1302 Irving, Royal Oak; LAHEY, INC., 6660 Mt. Elliott, Detroit 11; NOR-WEST MACHINERY MOVERS, 15010 W. Warren, Dearborn; and TURNER CARTAGE & STORAGE COMPANY, 1657 Howard, Detroit 16.

The ASSOCIATION as agent and on behalf of its members has negotiated a labor agreement effective from May 1, 1962 to April 30, 1965 with MACHINERY MOVERS, RIGGERS & MACHINERY ERECTORS, LOCAL UNION #575.

3) The aforesaid labor agreement in Section III CRAFT JURISDICTION, sets out that part of the work which the employers shall

assign to the Riggers Local #575 shall be:

"The moving, dismantling, erection, handling, assembling, and disassembling, lowering, hoisting, unloading, place and locating of all machinery, equipment, apparatus to approximate final location . . . including the use of rollers, jacks, slings, chainfalls"

The aforementioned work, in accordance with the labor agreement, is assigned to about 350 members of Local #575.

4) The work assignment dispute in the above-captioned matter covers work which DON'S CARTAGE COMPANY and all other members of the ASSOCIATION have promised by the aforesaid labor contract to assign to Local #575. The dispute therefore is common to all members of the ASSOCIATION and concerns work assignment in which they all have a common interest.

5) From time to time in the past MILLWRIGHTS' UNION LOCAL #1102 has made demand upon members of the ASSOCIATION for assignment of the aforesaid disputed work to them; but by the aforementioned contract, the ASSOCIATION has promised to assign such work to Local #575.

6) Riggers Union Local #575, in 7-RM-159, July 1, 1957, was certified as the bargaining representative for all employees of members of the ASSOCIATION doing like and analogous work to that which is the subject matter of the instant work assignment dispute.

7) The ASSOCIATION and its members can provide relevant evidence concerning factors which the NLRB will consider in making a decision on the assignment of the disputed work. This evidence includes, in part, the skills and work involved, industry practice, previous assignments made by employers of similar work and the efficient operation of the employers' businesses.

8) All members of the ASSOCIATION, as well as DON'S CARTAGE, have an interest in these proceedings as they bear on future costs and efficiency of doing the disputed work.

9) It will promote administrative efficiency and serve to prevent future and like litigation if the ASSOCIATION is permitted to intervene and participate in these proceedings.

WHEREFORE, the ASSOCIATION requests that the Regional Director rule favorably on this Motion to Intervene and allow the ASSOCIATION to participate fully in the proceedings so that a decision by the National Labor Relations Board concerning the assignment of the disputed work shall be fully binding not only on the Unions involved herein but binding also on all members of this Association or allow intervention to such extent as the Regional Director may deem proper.

Respectfully submitted,

MICHIGAN CARTAGEMEN'S ASSOCIATION
11000 W. McNichols, Detroit, Michigan
by /s/ Charles Quig

Date: April 15, 1964
[Certificate of Service]

APPENDIX II

REQUEST FOR REVIEW OF ACTING REGIONAL DIRECTOR'S DISMISSAL OF CHARGE

PROLOGUE

To completely comprehend the Request for Review by the employer, Dobson Heavy Haul, Inc., of the dismissal of the charge in the above case, it is necessary to view this situation in light of the history of the jurisdictional dispute between Millwrights' Local #1102 and Riggers and Machinery Erectors, Machinery Movers Local Union #575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO in the Michigan area over the erection of machinery.

Dobson Heavy Haul, Inc. is a rigging contractor engaged in machine moving and erecting in the Eastern part of Michigan, primarily in the Saginaw Valley region, consisting of Bay City, Saginaw

and Flint. With the exception of some teamsters and operating engineers, its employees are members of Riggers Local #575. During the period involved it had a collective bargaining agreement with Riggers Local #575 commencing May 1, 1962 to April 30, 1965.

From time to time Dobson Heavy Haul has been a member of the Michigan Cartagemen's Association, Heavy Haulers' Division, and has authorized the same to do its collective bargaining with the Riggers Local #575. Michigan Cartagemen's Association has a Power of Attorney from Dobson Heavy Haul.

Riggers Local #575 is the Board certified representative of the rigging employees of all members of the Michigan Cartagemen's Association, Heavy Haulers' Division, including Dobson. See Riggers Local #575, 117 N.L.R.B. No. 233. Case No. 7-RM-159 (1957).

The history of the dispute between Millwrights Local #1102 and Riggers Local #575 in a thirty-four county region in Eastern Michigan dates back for at least twenty years. In recent times this jurisdictional dispute was before the Board twice. Millwrights Local #1102 (Don Cartage Company) 120 N.L.R.B. 101 (1958); Millwrights Local #1102 (General Riggers and Erectors, Inc.) 127 N.L.R.B. 26 (1960).

In March, 1964 the Millwrights clearly violated 8(b)(i)(ii)(D) at the Ternstedt Division of General Motors Corporation in Detroit when they picketed Don Cartage to re-assign the work from the Riggers to the Millwrights. This resulted in Case No. 7-CD-97(1-5). The Michigan Cartagemen's Association, Heavy Haulers' Division, intervened as parties in interest.

This case was tried for 38 days during the summer of 1964 in Detroit and had a record of approximately 4,000 pages. Extensive briefs have been filed and the matter is now pending before the Board. The case involved the same jurisdictional dispute as in the case now being appealed.

On May 20, 1964, Dobson Heavy Haul filed a charge against the Millwrights for threatening Dobson in violation of 8(b)(i)(ii)(D) to force

Dobson to reassign work it had given to the riggers at the Buick Motor Car Company in Flint, Michigan. This case was number 7-CD-103. In September the case was withdrawn because all parties realized that the decision to be made in 7-CD 97(1-5) would govern 7-CD-103 and the parties saw no necessity of going through an additional hearing at that time.

While Case No. 7-CD-97(1-5) was pending, the millwrights again threatened Dobson Heavy Haul in January 1965 at the Chevrolet Division of the General Motors Corporation plant at Bay City, Michigan, and in doing so was attempting to have Dobson reassign work from the riggers to the millwrights. In particular, the Millwrights actually picketed. The legend on the picket signs was as follows:

"This job unfair to Millwrights Local 1102. Work performed for Loren Company by Dobson Heavy Haul, being paid substandard wages and fringes. This is not for recognition or bargaining purposes."

Under these circumstances, Dobson filed a charge, being Case No. 7-CD-124(2). A settlement agreement was entered into, a copy of which is attached hereto and marked Exhibit 1 and 1-A. The date of the settlement agreement and the accompanying notice was February 19, 1965. The picketing was withdrawn. A little more than sixty (60) days later (just beyond the sixty (60) days notice posted requirement), the facts that constitute this case arose.

STATEMENT OF FACTS

In April 1956 Dobson Heavy Haul of Bay City, Michigan, received two contracts, one from the J. R. Hieneman Company of Saginaw, Michigan, and one directly from the Dow Chemical Company in Midland, Michigan, to do certain machine moving and machine erecting at Dow's Midland plant, in Michigan. In April 1965 Kenneth Goddard was approached by Jack Lynn, Assistant Millwright Local 1102 Business Agent, who made a demand that the work involved should be assigned to Millwrights. Mr. Goddard replied that the work was assigned to

Riggers, pursuant to his contract with Riggers' Local 575, and that no change in the assignment would be made. Lynn also stated that there was a difference in the fringe and wage package between the Millwrights and Rigger contracts. Goddard replied that through the Cartmen's Association he was bargaining a new contract with Riggers and that the Riggers were certified, and he did not intend to bargain with the Millwrights.

On April 26, 1965, Millwrights Local 1102 posted a picket line at the Dow Chemical Plant in Midland, Michigan, where Dobson was doing the work involved. The signs were as follows:

"Dobson Heavy Haul performing Millwright work at sub-standard Millwright wages and fringe benefits. Millwrights' Local 1102. We are not asking for recognition or bargaining rights."

As a direct result of this picketing, approximately 1,000 tradesmen walked off the job, or refused to cross the Millwrights' picket line, thus stopping the entire building project at Dow Chemical.

ARGUMENT

Case Number 7-CD-124(2) involved area standard picketing. Not only did the acting Regional Director of the Seventh Region issue a complaint, but Millwrights' Local 1102, after the advice of competent counsel, entered into a stipulation of settlement to refrain from said picketing. (See Exhibits 1 and 1-A.) So, at least in 124(2) everyone agreed that area standard picketing under these circumstances violated 8(b)(i)(ii)(4)(D). The Acting Regional Director did. Your undersigned as attorney for Dobson Heavy Haul did. The attorney for Millwrights' 1102 did.

Bay City is approximately 11 miles from Midland, Michigan. A little beyond the 60 days requirement of posting the notice, the millwrights did the same thing as they did in 124, only this time it was done in Midland, Michigan, at the Dow Chemical Company. A thousand employees refused to cross the picket line. There was a work stoppage

There is no difference in saying as in 124 ". . . Work performed for Loren Company by Dobson Heavy Haul being paid as in this case substandard wages and fringes . . ." and "Dobson Heavy Haul performing millwright work at substandard millwright wages and fringe benefits . . ."

This appeal deliberately contained a prologue to place this dispute in its proper setting. Dobson Heavy Haul in a year's time has brought at least three charges involving the same dispute, to-wit, the question of aligning and leveling and erecting of machinery, between riggers and millwrights to the attention of the Board. The Association to which Dobson Heavy Haul is a member and one of its competitors, Don Cartage Company, invested 38 days of hearing time in the summer of 1964 to attempt to resolve the dispute.

No doubt the region is attempting to rely on International Hod Carriers' Builders and Common Laborers' Union of America, Local No. 41 (Calumet Contractors' Association) 133 NLRB 512 (1961). In all due respect this reliance is misplaced. The Calumet Contractors' Association case involved an 8(b)(4)(C) violation. The Union there specifically denied any object of recognition. As a matter of fact, the certification of the Union recognized by the employer there was brand new. It was not a certification of eight years' standing as in the present case.

More important, the record in Calumet did not reveal as here a history of a long standing jurisdictional dispute. Remember, in the last year 38 days of trial time have been devoted to said jurisdictional dispute and this small company, Dobson Heavy Haul, has had at least three charges filed, including one in which the millwrights settled where area standard picketing was the definite factor.

Sometimes there are those on the legal staff of the Board that make the broad statement that the Board carte blanc approves area standard practice. But Calumet, when urged in support of the proposition that area standard picketing is legal, has subsequently frequently

been rejected by the Board for this proposition in subsequent cases.

See e.g. Local 130, Brotherhood of Painters, et al. (Joiner, Inc.) 135 NLRB 876 (1962). Local 1109 Drug and Hospital Employees (Janel Sales Corporation) 136 NLRB 1564 (1962).

In rejecting Calumet and finding an 8(b)(4)(i)(ii)(B) violation, the Board affirmed the Trial Examiner's findings and conclusions in Building and Construction Trade Council of Boston (John E. Deady) 136 NLRB 1120. In discussing what Calumet really stood for, the Trial Examiner in Deady said at footnote 2 at 1124 as follows:

"The Respondents cite the recent supplemental decision in Calumet Contractors Association and George DeJong, 133 NLRB 512, to sustain their contention that picketing to maintain area standards of employment is a legitimate activity under the Act. I do not consider the case as authority for the proposition for which it is cited. The Calumet case involved picketing alleged to be violation of Section 8(b)(4)(C). The Board held that that section forbids only picketing with the objective of obtaining 'recognition and bargaining.' The union clearly disclaimed such an objective and sought only to eliminate subnormal working conditions from area considerations. Since this objective could be achieved without the employer recognizing or bargaining with the union, the Board held it could not reasonably conclude that the union's objective was to obtain recognition and bargaining."

More important than the above distinction, is the current attitude of the Board itself expressed in decisions in the last nine months, whereby the doctrine of Calumet has specifically been rejected in jurisdictional disputes and 8(b)(4)(D) violations flowing therefrom. Thus, in Plumbers and Pipe Fitters Union (Cascade Natural Gas Company) 149 NLRB No. 86 (1964) the Board specifically rejected a defense of area standard picketing and found an 8(b)(4)(D)(i)(ii) violation and consequently proceeded to assign the work under the CBS Mandate.

In the last five weeks on two occasions the Board has rejected a defense of area standard practice under the doctrine of Calumet and held that there had been a violation of 8(b)(4)(D) and then proceeded to assign the work. See Local 25 IBEW (Lyon Construction Company) 152 NLRB No. 53. (May 17, 1965); Local 25, et al. (Sarrow Suburban Electric Company) 152 NLRB No. 52 (May 10, 1965). In the Sarrow case the picket sign read as follows:

"To the Public

The Electricians Employed By Sarrow Suburban Electric.
Inc. Are Not Working Under Wages and Conditions Estab-
lished by Local Union 25. IBEW. AFL-CIO We Have No
Dispute With Any Other Employer At This Site."

(This is no different than the case at bar.)

As in Sarrow the Business Agent, Jack Lynn, approached Dobson Heavy Haul President, Kenneth Goddard, and demanded the assignment of the work from riggers to millwrights.

On top of all this, a thousand employees refused to work at the Dow Chemical Company as a result of the millwrights' picketing. This is clearly in violation of the 8(b)(4)(D) provisos.

EPA LOGUE - (CONCLUSION)

There can be no question that the Acting Regional Director erred in dismissing the charge in this case and in failure to issue a 10(k) for the following reasons:

1. History of the Riggers-Millwrights dispute in Michigan.
2. The 38 day hearing in Detroit in the summer of 1964 on the problem.
3. A settlement by the Millwrights approximately 60 days prior to the current dispute involving Dobson Heavy Haul and area standard picketing.
4. The fact that Dobson Heavy Haul has filed three charges in the last year involving the Millwrights and Riggers jurisdictional dispute.

5. The Board's recent rejection of the Calumet doctrine as it applied to jurisdictional disputes.

The plain, simple fact is that in view of the above there can be no question that this is a jurisdictional dispute. To allow the Millwrights to engage in area standard picketing under these circumstances and in this setting would ignore the purposes of 8(b)(i)(ii)(D) and 10(k) provisions of the Act.

Respectfully submitted,

Of Counsel:

Armstrong, Helm,
Marshall & Schumann

/s/ George T. Roumell, Jr.
Attorney for Dobson Heavy Haul
3400 Penobscot Building
Detroit, Michigan

In the Letter of

MILLWICKERS LOCAL UNION 1102, UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO

CASES NO.: 7-CC-287
7-CD-124 (2)
SETTLEMENT AGREEMENT

The undersigned labor organization (herein called the Union) and the undersigned charging party (herein called the Charging Party), in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board (herein called the Regional Director), HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE. Upon approval of this Agreement, the Union will post immediately in conspicuous places in and about its offices, including all places where notices to members are customarily posted, and maintain for a period of at least sixty (60) consecutive days from the date of posting, copies of the Notice to All Members attached hereto and made a part hereof. The Union will submit forthwith signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing, in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least sixty (60) consecutive days from the date of posting.

COMPLIANCE WITH NOTICE—The Union will comply with all the terms and provisions of said Notice.

תְּמִימָנָה וְעַמְלָנָה וְעַמְלָנָה וְעַמְלָנָה וְעַמְלָנָה

The execution of this Settlement Agreement does not constitute a Board determination that future assignments by Dobson Heavy Haul, Inc. of lining, leveling and anchoring of machinery and equipment is to be made to employees who are members of, or represented by, Riggers Local 575 rather than to employees who are members of, or represented by, Millwrights Local 1102, or vice versa.

REFUSAL TO ISSUE COMPLAINT—In the event the Charging Party fails or refuses to become a party to this Agreement, then, if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein and this Agreement shall be between the Union and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.19 of the Rules and Regulations of the Board if a request for same is filed within ten (10) days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's actions in the event of a review.

PERFORMANCE--Performance by the Unions with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Union of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE--The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Union has taken to comply herewith. Such notification shall be made within five (5) days, and again after sixty (60) days, from the date of the approval of this Agreement, or, in the event the Charging Party does not enter into this Agreement, after the receipt of advice that no review has been requested or that the General Counsel has statuted the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

MILLRIGHTS LOCAL UNION 1102, UNITED
FEDERATION OF CARPENTERS AND JOINERS
OF AMERICA, AFL-CIO
(Union)

Ex: Hiroki Ikeno Business Rep.
(Name and Title)
Date: 21/9/55

Recommended: 2/17/65
(Date)

24: Walter Finley

PERSONAL HEAVY EQUIPMENT CO., LTD.

(Charging Party)

By: [Signature] (Name and Title)
Silky // /
Date: 21/10/65

Approved: 2/25/65

16 (Date)

Acting Regional Director,
National Labor Relations Board

NOTICE TO ALL OUR MEMBERS AND TO ALL
EMPLOYEES OF DOBSON HEAVY HAUL, INC.,
LORNE INCORPORATED, INC. AND GENERAL
MOTORS CORPORATION, CHEVROLET MOTOR
DIVISION

PURSUANT TO

A Settlement Agreement in Cases Nos. 7-CC-287 and 7-CD-124-2 approved by the Acting Regional Director of the Seventh Region of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by Dobson Heavy Haul, Inc., Lorne Incorporated, Inc., General Motors Corporation, or any other person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to perform any service with an object of forcing or requiring Lorne Incorporated, Inc., General Motors Corporation, or any other employer engaged in commerce, to cease doing business with Dobson Heavy Haul, Inc.

WE WILL NOT threaten, coerce or restrain Dobson Heavy Haul, Inc., Lorne Incorporated, Inc., General Motors Corporation, or any other person engaged in commerce, with an object of forcing or requiring Lorne Incorporated, Inc. or General Motors Corporation, Chevrolet Motor Division, to cease doing business with Dobson Heavy Haul, Inc.

WE WILL NOT in any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, or by any like or related actions or conduct, or by permitting such to remain in existence or effect, engage in or induce or encourage any individual employed by Dobson Heavy Haul, Inc., Lorne Incorporated, Inc., General Motors Corporation, or any other person engaged in commerce or in an industry affecting commerce.

EXHIBIT B

**NOTICE TO ALL OUR MEMBERS AND TO ALL
EMPLOYEES OF DOBSON HEAVY HAUL, INC.,
LORNE INC., AND GENERAL MOTORS CORPO-
RATION. CHEVROLET MOTOR DIVISION**

PURSUANT TO

A Settlement Agreement in Cases Nos. 7-CC-287 and 7-CD-124(2) approved by the Acting Regional Director of the Seventh Region of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, we hereby notify you that:

WE WILL NOT induce or encourage any individual employed by Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other person engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of their employment to perform any service with an object of forcing or requiring Lorne Inc., General Motors Corporation, or any other employer engaged in commerce, to cease doing business with Dobson Heavy Haul, Inc.

WE WILL NOT threaten, coerce or restrain Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other person engaged in commerce, with an object of forcing or requiring Lorne Inc., or General Motors Corporation, Chevrolet Motor Division, to cease doing business with Dobson Heavy Haul, Inc.

WE WILL NOT in any manner or by any means including picketing, orders, directions, instructions, requests or appeals, however given, or by any like or related actions or conduct, or by permitting such to remain in existence or effect, engage in or induce or encourage any individual employed by Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other person engaged in commerce or in an industry affecting commerce, in the course of his employment to use, manufacture,

process, transfer, or otherwise handle or work on any goods, articles, materials, or commodities or perform any service, or in any manner or by any means, threaten, coerce or restrain Dobson Heavy Haul, Inc., Lorne Inc., General Motors Corporation, or any other employer engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Dobson Heavy Haul, Inc. to assign the work of lining, leveling, or anchoring of machinery or equipment to employees who are members of or represented by, Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO rather than to employees who are not members of or represented by Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, unless such employer is failing to conform to an Order or Certification of the Board determining the bargaining representative for employees performing such work.

MILLWRIGHTS LOCAL 1102, UNITED
BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO
(Labor Organization)

By /s/ George Horn,
Business Representative

Dated 3-9-65

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226. Telephone: 226-3244.

in the course of his employment to use, manufacture, process, transfer, or otherwise handle or work on any goods, articles, materials, or commodities or perform any service, or in any manner or by any means, threaten, coerce or restrain Dobson Heavy Haul, Inc., Lorne Incorporated, Inc., General Motors Corporation, or any other employer engaged in commerce or in an industry affecting commerce, where in either case an object thereof is to force or require Dobson Heavy Haul, Inc., to assign the work of lining, leveling, or anchoring or machinery or equipment to employees who are members of or represented by, Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO rather than to employees who are not members of or represented by Millwrights Local 1102. United Brotherhood of Carpenters and Joiners of America, AFL-CIO, unless such employer is failing to conform to an Order or Certification of the Board determining the bargaining representative for employees performing such work.

MILLWRIGHTS LOCAL 1102, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO
(Labor Organization)

Dated 2-19-65

By /s/ George Horn, Business Rep.

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If members have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 500 Book Building, 1249 Washington Boulevard, Detroit, Michigan 48226, Telephone: 226-3200.

APPENDIX III.

ORIGINAL

C S A REPORTING CORPORATION
OFFICIAL REPORTERSPLEASE REFER TO ABOVE
INVOICE NUMBER WHEN
REMITTING.939 D STREET, N. W.
WASHINGTON 4, D. C.

B-19427

DI - 7-4756

TO: • Michigan Cartagmen's Association
 • 11000 W. McNichols
 • Detroit, Michigan
 • Attn: Mr. Charles Quig, Jr.

DATE July 6, 1964

BEFORE NATIONAL LABOR RELATIONS BOARD
 DOCKET # 7-CQ-97 (1), etc.
 TITLE MILLWRIGHTS LOCAL 21102
 PLACE OF HEARING Detroit, Mich.

DATE		PAGES	RATE	AMOUNT
1964				
Apr. 30 thru June 26	One copy as per order Pages 1 - 2160	2160	.90	\$ 1944.00
	Transcript to: Geo. T. Scumell, Jr., Esq. 3400 Penobscot Bldg. Detroit, Mich.			
	DELIVERY CHARGES	10-25-64	9.30	
		6888	TOTAL \$	1953.30
				\$ 3600.40

PLEASE REFER TO ABOVE NUMBER WHEN REMITTING.

COURTIAL

C S A REPORTING CORPORATION
OFFICIAL REPORTERS

939 D STREET, N. W.
 WASHINGTON 4, D. C.

DI - 7-4756

PLEASE REFER TO ABOVE
 INVOICE NUMBER WHEN
 REMITTING.

B-19790

DATE August 7, 1964

TO:
 • Michigan Cartagener's Association
 • 11000 W. McNichols
 Detroit, Michigan
 • Attn: Mr. Charles Quig, Jr.

RECORD NATIONAL LABOR RELATIONS BOARD
 DOCKET # 7-CD-97 (1), etc.
 TITLE UMWELDERS LOCAL #1102
 PLACE OF HEARING Detroit, Mich.

DATE		PAGES	RATE	AMOUNT
1964				
uly 6---31	One copy as per order Pages 2161 - 3980 Plus page 3403A Transcript to: Geo. T. Dumoll, Jr., Esq. 3400 Penobscot Bldg. Detroit, Mich.	1821	.95 90	\$ 1729.95 163.90
	DELIVERY CHARGES			8.20
			TOTAL \$	1738.15

PLEASE REFER TO ABOVE NUMBER WHEN REMITTING.

1647-10

APPENDIX IV

AFFIDAVIT OF GEORGE T. ROUMELL, JR.

State of Michigan)
) ss
County of Wayne)

GEORGE T. ROUMELL, JR . being first duly sworn deposes and says that he is the attorney for Don Cartage Company and the Michigan Cartagemen's Association, Heavy Haulers' Division in Board Case 7-CD-97 (1 through 5) and related matters; that the statements made on pages 7 and 8 of the attached Answer to Order to Show Cause as to the times he has been consulted by members of the Michigan Cartagemen's Association concerning jurisdictional claims between Riggers' Local 575 and Millwright's Local 1102, are true to the best of his knowledge, said information having been obtained from his personal notes and time records; that the statement as to the time spent by said George T. Roumell, Jr. on Case No. 7-CD-97 (1 through 5) and related jurisdictional disputes between Riggers' Local 575 and Millwright's Local 1102 affecting the members of the Michigan Cartagemen's Association set forth on page 12 of the attached Answer to Order to Show Cause is true as revealed by his time records.

Further affiant sayeth not.

/s/ George T. Roumell, Jr

[Jurat dated June 16, 1965]

[Rec'd June 23, 1965, N.L.R.B.]

REPLY

Now comes John Quinn, an individual, and Riggers and Machinery Erectors Local 575, hereinafter referred to as Riggers, by its counsel, and submits herewith sufficient cause, factual, circumstantial and legal as to why the Board should not approve the alleged Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing and,

Further, although responding to the Notice To Show Cause the Riggers do not concede the legality or authority of the Board, in this matter, to issue such Notice or to proceed in this fashion.

1. The proposed action contemplated by the Board is contrary and repugnant to Section 8(B)(4)(D).

2. The action proposed by the Board is contrary and repugnant to the NLRB Certification of Riggers Local 575 under Section 9(C) of the National Labor Relations Act, as amended, and should the Board act as proposed it would result in the Board abrogating its statutory obligation, under the act, and more particularly section 9(C), and would vitiate its prior actions in this matter.

3. The action proposed by the Board is repugnant and contrary to the collective Bargaining agreement between the employer and the Riggers herein.

4. The action proposed by the Board is contrary and diametrically opposed to the mandate, laid upon the Board, by the U S Supreme Court in NLRB v. Radio and Television Broadcast Engineers Union Local 1212, 364 U.S. 573 (1961), (hereinafter referred to as CBS)

5. The Riggers cannot, and do not, admit or concede that there is a proper, and bona fide, "Settlement Agreement," as contemplated by the act and law, before the Board, for the following reasons and facts:

- A. Not all parties have agreed to any settlement agreement.
- B. Not all parties were consulted regarding an alleged Settlement.
- C. The Director of the 7th Region proceeded in an improper fashion in relation to the alleged Settlement agreement.
- D. The taking of proofs had been completed and the statutory time for the Director of the 7th Region to act had expired and he was without authority
- E. The proposed action contemplated by the Board would result in the continuation of "ex parte" proceedings which, according to the information and knowledge received, as part of the

work product of this matter, was begun at the instigation of certain Board members themselves, or agents of the Board acting on behalf of the Board.

Such ex parte proceedings were conducted secretly since on or before a date in February, 1965, without any notice to, or consideration of the rights of the Riggers or any other of the charging parties to this proceeding, and the only parties consulted were, to the best of our information, were the enjoined parties. Such ex parte proceeding is a violation of the National Labor Relations Act and the Administrative Procedures Act.

- F. The Action proposed by the Board unfairly shifts the Burden of Proof, in this matter, from the party who committed the unfair labor practice, the Millwrights and Building Trades Council, to the victims of that unfair labor act.
- G. Riggers were denied all opportunity to meet the action of the Board, prior to its issuance of a Notice to Show Cause, and, in fact, were informed that "no matter what you do this Settlement Agreement is being sent to Washington to the Board," and,

Further, the Board, by its agent, did not give proper and fair notice of his meeting for this proposed settlement agreement (a phone call at 9:20 a.m. for a 9:30 conference), and

Further, the Board, by its agent, gave counsel only 20 minutes to examine the proposed settlement agreement and,

Further, the Board, by its agent, refused this counsel the right to meet with his clients regarding this settlement agreement and,

Further, the Board by its agent, refused and failed to furnish this counsel, promptly, with a copy of the proposed settlement agreement at said meeting and,

Further, counsel's request for time to study the matter was flatly refused.

6. The action proposed by the Board is a denial of this party's right to due process under the law and the U.S. Constitution.

7. The action proposed by the Board is contrary and repugnant to all the factual circumstances leading up to and including the events adduced in the hearings held between April 30, 1964 through July 31, 1964.

8. The action proposed by the Board is contrary to the stipulation entered into by all the parties, at page 64 of the transcript, that this decision should apply to all parties and to the entire geographic area, wherein the parties may be in conflict.

This was so that the dispute herein might finally be settled in the manner envisioned by the U.S. Supreme Court in CBS.

9. The proposed action contemplated by the Board would grant a license to the charged, and legally enjoined, parties, to continue their harassment of the NLRB certified Riggers and the association members, under the guise of 'area standard' dicta of the Board as has been done several job sites since the hearing was closed in October, 1964.

Said incidents are a matter of record, and counsel asks the Board to take notice of them, however it is impossible to tabulate all such occurrences without subpoenas and depositions which the Board has denied this party.

We are informed and believe that John Dunlop, a witness in this matter, has contacted a. of the parties at the behest of a Board representative.

In the event that the Board, within its considered opinion, decides to take the proposed action contrary to Riggers position, it is respectfully submitted that the Board's decision and Order direct itself to the following posed questions:

1. Did the Board, at any point of its administrative processes in considering the formal record compiled in this proceeding, conclude on the basis of the record that an appropriate award could issue?

2. If so, when was such determination made? Which Board members participated in such determination?
3. At what point, in time, did ex parte proceedings begin?
4. Were ex parte proceedings initiated by the "ex parte" or by the Board members, or any of its agents, acting on behalf of the Board? Who were these parties?
5. Were any notices, conferences or communications, written or oral, directed to the Millwrights, Building Trades Council, or agents acting on behalf of these parties?
6. At what point of the ex parte proceeding did the acting Regional Director of the Seventh Region enter these settlement proceedings or did he initiate these settlement proceedings?
7. Were these ex parte proceedings at the direction, or participation by, the General Counsel?
8. Were any Special Board meetings held prior to and in relation to the Notice to Show Cause?
9. If the answer to #8 is affirmative, did the General Counsel of the Board participate in the Special Board meeting and make recommendations?

If so, what recommendations were made by the General Counsel?
10. How much time did the Board, by its agent acting Director Brooks, take to negotiate the proposed settlement agreement?

Wherefore we ask that the Board grant the following relief:

 - A. Disapprove the Proposed Settlement agreement.
 - B. Quash the Notice to Show Cause.
 - C. Render a decision in accord with the directions of the U.S. Supreme Court in CBS.
 - D. Grant a public hearing on the Notice to Show Cause.
 - E. Grant the right of oral argument.
 - F. Grant this party the issuance of subpoenas, heretofore denied, so that we can discern the truth of what was done

in this matter and properly answer this Notice to Show Cause.

- G. Stop all witnesses, in this matter, from attempting to negotiate with the parties under color of the Boards authority.

Respectfully submitted,

By /s/ Frank P. Bennett
Attorney at Law
Dated June 19th 1965

[Affidavit of Service]

[Filed September 17, 1965]

PETITION TO SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD AND FOR DIRECTION BY COURT TO BOARD THAT BOARD RENDER DECISION AND ORDER IN ACCORDANCE WITH NATIONAL LABOR RELATIONS ACT AS AMENDED

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Don Cartage Company, a Michigan corporation, and Michigan Cartagemen's Association, Heavy Haulers' Division, pursuant to the National Labor Relations Act, as amended, (61 Stat. 136, 29 USC. Section 151 et seq. as amended by 73 Stat. 519), hereinafter called the Act, and pursuant to the Administrative Procedure Act, (60 Stat. 237, 5 USC Section 1001, et seq.) respectfully petitions this Court to set aside an Order rendered by the National Labor Relations Board against your petitioners, Don Cartage Company and the Michigan Cartagemen's Association, Heavy Haulers' Division, and to direct the Board to issue a decision and an Order in accordance with the mandates of the Act. The proceedings resulting in the said Order are known upon the records of the Board as Cases No. 7-CD-97 (1)-(5) and the Order is reported at 154 NLRB No. 45.

In support of this petition, petitioners respectfully show:

1. Don Cartage Company is engaged in business in the State of

Michigan and Michigan Cartagemen's Association, Heavy Haulers' Division, is a non-profit corporation incorporated under the laws of the State of Michigan with its principal office in the State of Michigan. The unfair labor practice giving rise to the Board's aforementioned proceedings occurred in Michigan. The aforementioned Order is a final Order of the National Labor Relations Board. This Court has jurisdiction of this petition by virtue of Section 10(f) of the National Labor Relations Act, as amended.

2. Pursuant to a charge alleging a violation of Section 8(b)(4)(D) of the Act filed by Don Cartage Company against Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, (hereinafter called Local 1102), and against the Carpenters District Council in Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, (hereinafter called Carpenter Council), and pursuant to similar charges filed by one John Quinn against the same Unions as well as the Detroit and Wayne, Oakland and Macomb Counties, Michigan Building and Construction Trades Council, (hereinafter called The Building Trade Council), The National Labor Relations Board through Jerome H. Brooks, Acting Regional Director for the Seventh Region of said Board as authorized by Section 10(k) of the Act issued a notice to determine a jurisdictional dispute between said Local 1102 and Riggers and Machinery Erectors, Machinery Movers, Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (hereinafter called Local 575). By Order of the Board petitioner Michigan Cartagemen's Association, Heavy Haulers' Division, was permitted to intervene in the proceedings. Said hearing lasted from April 30, 1964, through July 31, 1964, covering some thirty-four (34) days of actual hearing. Following the hearing counsel for the respective parties in interest filed extensive briefs with the National Labor Relations Board, said briefs being filed on or about October 15, 1964. On or about May, 1965, Local 1102, the

Carpenters Council and the Building Trades Council entered into an ex-parte settlement agreement which your petitioners as well as Riggers Local 575 refused to join into. On or about August 16, 1965, the Board issued a Decision and Order in reference to said alleged settlement agreement and this entire matter approving the ex-parte settlement agreement and quashing the notice of hearing (which actually was held) sent pursuant to Section 10(k) of the Act as amended. Presumably, on said August 16, 1965, the Board's Decision and Order was served upon petitioners by sending a copy thereof postpaid bearing government frank, by registered mail, to petitioners' counsel.

3. That the aforementioned Order of the Board approving the ex-parte alleged settlement agreement and quashing the notice of hearing sent pursuant to Section 10(k) of the Act as amended is illegal and highly irregular as same is contrary to the mandate of Congress expressed in Section 10(k) of the Act as interpreted by the Supreme Court of the United States in NLRB vs. Radio and Television Broadcast Engineers Union Local 1212, 364 US 573 (1961), (hereinafter referred to as CBS case), and in particular the Order of the Board is illegal and irregular because:

A. The Order of the Board does not assign the disputed work as required by Section 10(k) as interpreted by the Supreme Court in the CBS case.

B. The Order of the Board is contrary to the agreement on the record in this case made by the counsel for all parties for a determination of the disputed work involved in a given geographical area of Michigan.

C. That the Board by its own admission based its Decision and Order on ex-parte procedures not joined in by your petitioners, a charging party, John Quinn, an individual and charging party and Riggers 575, a union in interest.

D. That the Order is based, by the Board's own admission, on matters not part of this record and on procedures which the petitioners,

John Quinn or Riggers Local 575, have never agreed to be a party to, as the Board in its Decision admitted.

4. That because of the illegal and irregular actions of the Board as set forth in paragraph 3 above, this Court should set aside the aforementioned Order of the Board and remand this matter to the Board with directions to make a determination and assignment of the disputed work as required by Section 10(k) of the Act as interpreted by the Supreme Court in CBS and as required by the agreement on the record in this case between the counsel for all parties herein involved that a determination of the disputed work in a given geographical area of Michigan be made by the Board.

5. Pursuant to Section 10(f) of the National Labor Relations Act as amended, and pursuant to Rule 38(g) of this Court, petitioners are requesting that the Board file with this Court a list of all documents and transcripts of testimony, exhibits and other materials comprising the entire record of this proceeding before the Board and pursuant to which the Board's Order was entered, including the pleadings, testimony and evidence, findings of fact and the Board's Decision herein.

WHEREFORE, petitioners pray this Honorable Court that it cause notice of the filing of this petition and request for filing of transcript and entire record to be served upon respondent, and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter an Order setting aside the Order of the Board and directing the Board to make a determination and assignment of the work in dispute in this matter in accordance with Section 10(k) of the Act as interpreted by the Supreme Court of the United States and in accordance with the agreement on the record in this case made by counsel for all parties herein that the Board make a determination of the assignment of the disputed work involved in a given geographical area of Michigan.

/s/ George T. Roumell, Jr.
Attorney for Petitioners

* * *

Dated: Detroit, Michigan
September 7, 1965

* * *

PETITION FOR REVIEW OF A DECISION
AND ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Court of Appeals
for the District of Columbia Circuit:

John Quinn and Riggers and Machinery Erectors, Local 575 respectfully petition this Honorable Court to review a Decision and Order of the National Labor Relations Board in cases Nos. 7-CD-97-1 and 2, 154 NLRB No. 45, issued August 16, 1965.

This petition is filed pursuant to Section 10(f) of the Labor-Management Relations Act, 1947, 29 U.S.C. §160(f) (Supp. 1952), hereafter referred to as the "Act." In accordance with Rule 38 of the Rules of this Court, the petitioners state as follows:

1. The nature of the proceedings as to which review is sought.

The proceedings were initiated by charges brought by petitioner and Don Cartage Company that Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO and Detroit and Wayne County, Oakland and Macomb Counties, Michigan Building and Construction Trades Council had violated §8(b)(4)(D) of the Act. Petitioner Local 575 intervened in the proceedings. Thereafter, a notice of hearing under §10(k) of the Act was issued. Subsequently, lengthy hearings were held before Milton Fisher, Hearing Officer. Thereafter, the Board issued a notice to show cause why the Board should not approve a proposed settlement order. By its decision and order of August 16, 1965, the Board approved the proposed settlement agreement and refused to decide the issues presented by the §10(k) hearing and the §8(b)(4)(D) charge.

2. The facts upon which venue is based.

Section 10(f) of the Labor-Management Relations Act, 1947, 29 U.S.C. §160(f) (Supp. 1952), provides in part that,

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order . . . in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside.

3. The grounds on which relief is sought.

The Board's Decision and Order approving the Settlement Agreement and quashing Notice of Hearing was incorrect and contrary to the direction of the U.S. Supreme Court mandate in NLRB v. Radio & Television Broadcast Engineers Union, Local 1212, IBEW, 364 U.S. 573 (1961).

The Board refused to settle and resolve the jurisdictional dispute of long standing which gave rise to the proceeding before the Board.

The Board did not have authority to accept the ex-parte settlement agreement which was opposed by the charging parties after the §10(k) hearing was completed and submitted and the parties had stipulated that they were petitioning the Board for a final decision of the entire dispute with geographical application based on jurisdiction.

The Board acted incorrectly in deferring its statutory obligation to decide the case based on the consideration of the ex post facto establishment of a National Joint Board, which does not have jurisdiction over all the parties to this proceeding.

The Board, admittedly, based its decision on ex-parte procedures which were not joined in by petitioner John Quinn or Don Cartage Company, a charging party, and Riggers Local 575, an intervenor.

4. The relief prayed.

Petitioners ask this Court to set aside the Board's decision and remand the case to the Board with an order directing the Board to make a determination of this dispute, and an assignment of the work in the dispute, in accordance with the Labor-Management Relations Act and the decision of the U.S. Supreme Court.

Respectfully submitted this 10th day of September, 1965.

FRANK P. BENNETT

* * *

/s/ RONALD ROSENBERG

* * *

Attorneys for Petitioners

[Certificate of Service]

DECISION AND ORDER APPROVING SETTLEMENT AGREEMENT
AND QUASHING NOTICE OF HEARING

This is a proceeding under Section 10(k) of the National Labor Relations Act, following the filing of charges by Don Cartage Company, hereinafter called Don Cartage, and John Quinn, an individual, under Section 8(b)(4)(D). The charges allege, in substance, that on or about March 3, 1964, Respondents Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein-after called Millwrights 1102; Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein-after called Carpenters Council; and Detroit and Wayne County, Oakland and Macomb Counties, Michigan Building and Construction Trades Council, herein-after called Detroit Trades Council; engaged in, and induced and encouraged, a work stoppage in order to force or require Don Cartage and Ternstedt Division, General Motors Corporation, herinafter called Ternstedt, to assign particular work to members of Respondent Millwrights 1102 rather than to members of Riggers and Machinery Erectors, Machinery Movers Local No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, herein-after called Riggers 575. A hearing was held on various dates from April 30, 1964, through July 31, 1964, before Hearing Officer Milton Fischer. Thereafter, on May 20, 1965, Respondents Millwrights 1102 and Carpenters Council, and the Acting Regional Director for Region 7 entered into a Settlement Agreement whereby the aforesaid Respondents agreed that they were not

entitled by means proscribed by Section 8(b) (4)(i) and (ii) of the National Labor Relations Act, as amended, to force or require Don Cartage Company to assign certain disputed job tasks performed by it, involving the erection and installation of machinery and equipment at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan,

to employees who are members of, or represented by, Millwrights Local No. 1102 rather than to employees who are members of, or represented by, [Riggers 575] . . . to whom the work was assigned by Don Cartage Company. The Unions further withdraw any request for assignment of said work performed by Don Cartage Company at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan.

On May 28, 1965, the Board issued a notice directing Riggers 575, Don Cartage, Michigan Cartagemen's Association, Heavy Haulers' Division, and John Quinn to show cause "why the Board should not approve the Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing." Thereafter, Don Cartage, Michigan Cartagemen's Association, and John Quinn and Riggers 575 filed answers opposing approval of the Settlement Agreement.^{1/}

Having duly considered the terms of the Settlement Agreement, and the responses to the Notice to Show Cause, the National Labor Relations Board has concluded that the policies of the Act will be effectuated by approving the Settlement Agreement and quashing the Notice of Hearing. In reaching this conclusion, we have considered the arguments of the Charging Parties, John Quinn and Don Cartage, and of the Intervenor, Michigan Cartagemen's Association, that they have not approved the Settlement Agreement, that at the 10(k) hearing the parties had agreed that the Board should make a jurisdictional award extending beyond the precise dispute at the Ternstedt Building project which led to the filing of the present charges, and that the parties have spent considerable time and money on the 10(k) hearing and on briefs to the Board in the expectation that the Board would permanently resolve the fundamental dispute between the two unions.

^{1/} These parties have also requested oral argument. As the record herein, including the briefs and responses of the parties, adequately presents the issues and positions of the parties, the requests are hereby denied.

The arguments of the opponents of the Settlement Agreement are weighty, but we believe that they are overbalanced by other considerations discussed below, which justify the Board in refusing at this time to make an award which extends beyond the particular dispute at the Ternstedt project. The Settlement Agreement does resolve this dispute.

The present dispute relates to certain work involved in the dismantling, moving, and erection of heavy machinery and equipment, which has been a bone of contention between Millwrights 1102 and Riggers 575 for more than 20 years. Before 1956, many unsuccessful efforts were made to resolve the dispute, including efforts by Building and Construction Trades Department of the AFL-CIO, National Joint Board for Settlement of Jurisdictional Disputes, on-the-job adjustments, and agreements between the parent Internationals and the Locals. All these proved unavailing. In 1956, the presidents of the Internationals and of the Locals involved in the dispute appointed Dr. John T. Dunlop to investigate the conflicting claims and formulate a solution. Dr. Dunlop prepared an Award which divided the work involved in "unloading, moving, handling, placing, erecting, assembling, adjusting, aligning, and leveling of all machinery and machine parts" between the two unions. On May 23, 1957, both Locals as well as their parent Internationals signed the Award, agreeing to be bound thereby. This Award was still binding upon the unions, although not upon the employers who were not parties thereto, at the time of the 10(k) hearing in 1964.^{2/} The work assigned to members of Millwrights 1102 following the picketing conformed with the Award

2/ An agreement between unions establishing machinery for resolving a jurisdictional dispute to which the employer has not adhered is not "an agreed upon method" for its voluntary dispositive under Section 10(k) of the Act. Local 68, Wood, Wire & Metal Lathers Int'l. Union (Acoustic & Specialties, Inc.), 142 NLRB 1073, 1076. However, an agreement between unions settling a jurisdictional dispute is a relevant and important factor in determining who is entitled to the work in controversy. International Association of Machinists (J. A. Jones Construction Company), 135 NLRB 1402; Local 68, Wood, Wire & Metal Lathers Int'l. Union (Acoustic & Specialties, Inc.), *supra*. By giving effect thereto, the Board has said, it "will be encouraging unions to settle such disputes by agreement, a desirable policy." Local 68, Wood, Wire & Metal Lathers Int'l. Union (Acoustic & Specialties, Inc.), *supra*, at p. 1079.

signed by the unions.

On February 2, 1965, after the completion of the hearing in this case and of the work in dispute at the Ternstedt project, the Building and Construction Trades Department, AFL-CIO, of which the parent Internationals of Millwrights 1102 and Riggers 575 are members, Associated General Contractors of America, and participating Specialty Contractors Employers' Associations, signed an agreement at the White House reconstituting, effective April 1, 1965, the National Joint Board for Settlement of Jurisdictional Disputes and establishing new standards and new appeals procedures for the settlement of such disputes.^{3/} A "Joint Release by Representatives of Labor and Management in the Construction Industry" commented on the new agreement as follows:

A new labor-management agreement for the peaceful and orderly settlement of jurisdictional disputes in the construction industry was announced today. It is designed to prevent the loss of working time due to such disputes in private and public construction projects.

While the agreement was signed at a White House ceremony and its purpose was commended by President Johnson, the government is not involved in either its adoption or its operation.

The agreement provides for major reorganization of the machinery of the National Joint Board for the Settlement of Jurisdictional Disputes

Major changes included in the new agreement call for:

1. Establishment of a new Appeals Board, headed by an impartial umpire, to render final decisions. In the past any appeal from a decision of the National Joint Board could be taken only to the same tribunal.

3/ Operative Plasterers and Cement Masons International Association (Twin City Tile and Marble Company), 152 NLRB No. 148.

2. Protection of the interests of the consumer in the settlement of jurisdictional disputes, with due regard given to such factors as efficiency and economy of operation.
3. Definition of the criteria to be used by the Joint Board in making decisions. These include decisions and agreements of record as set forth in the "Green Book," valid agreements between affected international unions attested by the chairman of the Joint Board, established trade practice and prevailing practice in the locality.
4. Consultation with appropriate management groups in the negotiation of jurisdictional agreements between international unions.

Arrangements are being made for rotating membership on the Joint Board, so that all unions and participating employers will have the opportunity from year to year to serve in the decision-making process. No union representative or employer will be permitted to sit in judgment on a case in which his union or company is directly involved.

The Rules of the National Joint Board, it was emphasized, provide that there shall be no stoppage of work while disputes referred to it are under consideration. The same rule will apply with regard to the Appeals Board.

In a joint statement issued after the signing of the new agreement, representatives of the participating groups said:

"This agreement is the fulfillment of more than a year's negotiations between representatives of labor and management in the construction industry with a view to perfecting the machinery established for the orderly and equitable settlement of jurisdictional disputes

"We firmly believe we have come up with a plan which will work to the best interests of the employees, the employers and the nation as a whole.

"It is our purpose to make use of the new machinery to reduce substantially jurisdictional disputes in private, public and national defense construction covered by this agreement. We are determined to exercise our responsibility to bring about that desirable objective. At the same time, we believe it will serve the public interest for labor and management in this industry to solve jurisdictional problems with a maximum of practical judgment and fairness and with a minimum of government interference."

Both the international unions involved in this proceeding are members of the Building and Construction Trades Department, AFL-CIO, and consequently they and their constituent local unions are bound by the procedures of the new Joint Board. At the present time, so far as appears, neither Don Cartage nor the Michigan Cartage Association is a member of an employer group adhering to the new agreement for the settlement of jurisdictional disputes. We cannot now say, therefore, that the new Joint Board will be able definitively to settle, on the broad basis desired, the jurisdictional dispute between the contending Riggers and Carpenters locals. Nevertheless, we believe that the new Joint Board should be given the opportunity to resolve this dispute on a voluntary basis. It may be that after study of the new procedures of the Joint Board, the employers will find these more acceptable than the old and will agree to submit their dispute to the new Joint Board. Or, if they refuse to make this submission, they may find that an award of the Joint Board on submission by the two unions is acceptable as a resolution of the jurisdictional dispute. The Board, too, may profit from such an award if it is forced to make its own jurisdictional determination even if the Joint Board award is not dispositive of the jurisdictional dispute under Section 10(k). One of the relevant factors in determining who is entitled to the work in dispute, the Board has said, is an award by a joint board in the same or related cases.^{4/} An award by a joint board

4/ International Association of Machinists (J. A. Jones Construction Company), 135 NLRB 1402, 1411.

of standing and experience, following procedures of fairness and impartiality, cannot fail to be helpful to the Board in making a jurisdictional determination if it is ultimately required to do so.

The Settlement Agreement determines the particular jurisdictional dispute which gave rise to the present proceeding. None of the opposing parties challenges this resolution as applied to the Ternstedt project, where the dispute arose. The point of the objections to the Settlement Agreement is that the Board should presently decide similar jurisdictional disputes which may arise in the future. In the exercise of our discretion, we decline to do this at the present time. This decision is not irrevocable. If the new Joint Board is unable to resolve the jurisdictional dispute on the broad basis desired, the Board's procedures will then be available for doing so.

Although the conduct of the long hearing in this case has caused the expenditure of time and money by the parties to the dispute and the Government, we believe that this exercise of our discretion, in response to the establishment of the new Joint Board, will best effectuate the public policy to encourage voluntary settlements of jurisdictional disputes.^{5/} If we were to make a determination which extended beyond the Ternstedt dispute, we would be undercutting the new Joint Board at the very beginning of its operations and lessening its chances of success. The Board, employers, unions, and the public all have something to be gained by the successful operation of a voluntary system for the settlement of jurisdictional disputes. The Board, unions, and employers generally will save many times over the money expended on the hearing in this case if the new Joint Board will satisfactorily resolve, and therefore make unnecessary the submission of, even a small proportion of the jurisdictional dispute cases that would otherwise come before the Board.

For the foregoing reasons, we shall approve the Settlement

5/ Operative Plasterers and Cement Masons International Association (Twin City Tile and Marble Company), 152 NLRB No. 148.

Agreement recommended by the General Counsel and quash the Notice of Hearing.

IT IS HEREBY ORDERED that the Settlement Agreement be, and the same is, hereby approved: and

IT IS HEREBY FURTHER ORDERED that the Notice of Hearing issued herein be, and the same is, hereby quashed.

Dated, Washington, D. C. Aug. 16, 1965

/s/ Frank W. McCulloch
Frank W. McCulloch, Chairman

/s/ John H. Fanning
John H. Fanning, Member

/s/ Gerald A. Brown
Gerald A. Brown, Member

/s/ Sam Zagoria
Sam Zagoria, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

Member Jenkins, dissenting:

I would not approve the "settlement agreement," as in my view its approval in the circumstances of this case is not only unfair to interested parties, but in reality it settles nothing and leaves unresolved a serious jurisdictional dispute of long standing.

At the outset, it must be noted that aside from the Acting Regional Director, the only parties to this agreement are the Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities and Millwrights Local No. 1102. The competing union, Riggers Local No. 575, and the one representing the employees to whom the work in dispute had been assigned, is not a party to this agreement. Neither is John Quinn, a Charging Party, nor is Don Cartage Company, a Charging Party and the employer whom Respondents struck to force reassignment of the work to Millwrights. Nor has the agreement been approved by Intervenor Michigan Cartaglemen's Association, a multiemployer association representing

Don Cartage and nine other similarly engaged employers for bargaining purposes in a Board certified unit. Not only are these parties not signatories to the agreement, but as made abundantly clear by the responses of the Charging Parties and the Intervenor to the Notice to Show Cause, Board approval of this agreement is strongly, and in my opinion justifiably opposed. Simply on these facts alone--the ex parte nature of the "settlement agreement" and the vigorous opposition by parties alleged to have been wronged by Respondents' conduct--Board rejection of the agreement would be warranted. But there is more.

The particular dispute which gave rise to this proceeding involved, in essence, Respondents' picketing of Don Cartage at the Ternstedt Division of General Motors to force Don Cartage to reassign certain work from its employees represented by the Riggers to members of the Millwrights. The picketing proved successful in the sense that Don Cartage lost its contract with General Motors, and the job was awarded to a contractor who employed Millwrights to do the disputed work. This Ternstedt incident, the record establishes, was but one of a long series of conflicting jurisdictional claims between the Riggers and the Millwrights dating back some 20 years. At the hearing herein, all parties, including Respondents, agreed, clearly to settle this long dispute, to broaden the scope of the hearing beyond the work involved in the Ternstedt incident, and they further agreed that any award the Board should render should be in conformity with the expanded scope of the hearing. Thus, the parties agreed that the award should not be limited to Don Cartage's employees or to the Ternstedt dispute, but should apply to all members of the Riggers employed by employer-members of the Intervenor in those areas of Michigan where the Riggers and the Millwrights claim concurrent geographical jurisdiction. It was on this basis that the parties engaged in an extensive hearing lasting (with intervening adjournments) over 3 months, prepared and introduced voluminous exhibits, and compiled a transcript record of nearly 4000 pages. It was also on this basis that after the hearing the parties filed

with the Board lengthy briefs in support of their respective positions. Now today, approximately 1 year after the hearing closed, this Board approves a "settlement" by which Respondents simply agree that they are not entitled to force Don Cartage to assign to Millwrights the work in dispute at Ternstedt. Over and apart from the cost to the Government of the conduct of the lengthy hearing in this proceeding, the parties themselves have expended considerable funds, time, and effort to the end that a meaningful award would result. The "settlement," which is actually a repudiation by Respondents of their agreement at the hearing which led to this expenditure, resolves nothing. The Ternstedt job, which is the only one embraced within the "settlement," presumably was completed long ago, and under Respondents' terms, and notwithstanding the fact that the parties themselves recognize that the conflicting claims of the Riggers and Millwrights have been a continuous source of controversy, nothing in this agreement even tends to resolve that controversy. The brief filed on behalf of Don Cartage and the Intervenor refers to several recent efforts on the part of the Millwrights to obtain work assigned to members of the Riggers, and some of these efforts have led to charges which are presently pending with this agency. The record reflects that employer-members of the Intervenor perform 90 percent of the disputed work in the area involved, and when Respondents' record is considered in conjunction with this fact, labor peace in this area is not foreseeable without a positive determination of the running dispute which is what all parties originally sought. In all these circumstances, I would not allow Respondents to repudiate their agreement at the hearing by approving this "settlement."

There is still a further reason for not approving the agreement. Section 10(k) of the Act directs the Board to hear and determine disputes cognizable under that section. As the Supreme Court has told us, in such cases "it is the Board's responsibility and duty to decide which of two or more competing employee groups claiming the right

to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision." N.L.R.B. v. Radio and Television Broadcast Engineers Union (Columbia Broadcasting System), 364 U.S. 573. I cannot consider the Board's approval of the instant agreement a discharge of that responsibility and duty. The agreement can hardly be termed a "determination" of the long, continuing dispute between the Riggers and the Millwrights, for it leaves the parties in no better position than they were before the 10(k) hearing, and ignores the agreed-upon submission to the Board of the entire dispute--not just the Ternstedt job. The dispute in existence then continues to exist and will continue to vex the parties and lead to wasteful work stoppages. Nothing short of a full determination of that dispute will suffice, and this is what the Congress directed the Board to do. I share my colleagues' hopes that the new Joint Board will in the future render decisions which will result in settlement of these disputes acceptably to the parties, and thereby both promote industrial stability and lighten the work of this Board. This hope, however, relates to future submission of jurisdictional disputes and bears little relevance to a case which already has been fully litigated, submitted to this Board by the parties in its entirety (and not merely as to the particular job symptomizing the dispute) and is ripe for a decision from us which will terminate the entire dispute. My colleagues' hopes seem plainly to be misplaced in this case. Under the Act, our duty to hear and determine jurisdictional disputes is lifted only where all parties have agreed upon a voluntary method for adjustment of the dispute, e.g., bound or stipulated themselves to the jurisdiction of the Joint Board. Neither the Intervenor nor any of its members, including the struck employer, Don Cartage, has submitted itself to the Joint Board. Since no voluntary method for adjustment has been agreed to, this Board is required to make a determination.

For the foregoing reasons, I would not approve the "settlement agreement" nor quash the Notice of Hearing. Instead, I would do what I believe the Act commands us to do. The hearing has been held, the record has been made, and I would proceed to determine the merits of the dispute on the basis of that record and make an award in accordance with that determination.

Dated, Washington, D. C. Aug. 16, 1965

Howard Jenkins, Jr., Member
NATIONAL LABOR RELATIONS BOARD

[Filed Sept. 30, 1965]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DON CARTAGE COMPANY, A Michigan)
Corporation and MICHIGAN)
CARTAGEMEN'S ASSOCIATION, HEAVY)
HAULERS' DIVISION,)
Petitioners,)
v. :) No. 19686
NATIONAL LABOR RELATIONS BOARD,)
Respondent.)

ANSWER TO PETITION TO SET ASIDE ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board files this Answer to the
petition to set aside filed in this proceeding:

1. The Board admits the allegations in paragraph numbered 1 of the petition to set aside regarding jurisdiction.

2. With respect to the allegations in paragraph numbered 2 of the petition to set aside, the Board prays reference to the certified transcript of record for a full and exact statement of the proceedings before the Board, the pleadings, the conclusions and order of the Board, and all other proceedings had in this matter.

3. The Board denies each and every allegation of error contained in paragraph numbered 3 of the petition to set aside.

4. With respect to the prayer for relief contained in paragraph numbered 4 of the petition to set aside, the Board requests that such prayer be denied.

5. Pursuant to Sections 10(e) and (f) of the National Labor Relations Act, and Rule 38(g) of this Court, the Board will certify and file a list of all documents, transcripts of testimony, exhibits and other material comprising the entire record of the proceedings before the Board.

WHEREFORE, the Board prays that this Court cause notice of the filing of this Answer to be served on petitioners and that this Court enter a decree denying the petition to set aside.

Dated at Washington, D. C
Sept. 30, 1965

/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

[Filed Nov. 8, 1965]

MOTION FOR LEAVE TO ADDUCE NEWLY
DISCOVERED EVIDENCE

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

The National Labor Relations Board, pursuant to Sections 10(e) and (f) of the National Labor Relations Act (29 U.S.C. Secs. 160(e) and

(f)) (hereafter called the Act,^{1/} respectfully moves the Court for leave to adduce newly discovered evidence which, the Board submits, is highly material both to the question of the Board's power to act in the proceedings below, and to issues presented by the instant review proceedings in this Court. In support of its motion the Board shows as follows.

1. Petitioners in these consolidated cases are seeking review of the Board's Decision and Order issued on August 16, 1965, in Board Cases Nos. 7-CD-97-1 through 5, and reported at 154 NLRB No. 45.

2. The Board proceedings were initiated by charges filed by petitioners John Quinn, an individual, and Don Cartage Company (hereafter called Don Cartage), alleging that Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereafter called Millwrights 1102); Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereafter called Carpenters Council); and Detroit and Wayne County, Oakland and Macomb Counties, Michigan Building and Construction Trades Council, had violated Section 8(b)(4)(D) of the Act by engaging in, and inducing and encouraging, a work stoppage at a project at General Motor's Ternstedt Division Plant No. 9 in Detroit in order to force or require Don Cartage and the Ternstedt Division to assign particular work to members of Millwrights 1102 rather than to members of Rigging and Machinery Erectors, Machinery Movers Local No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (hereafter called Riggers 575).

^{1/} The relevant part of Section 10(e), which is incorporated by reference into Section 10(f), provides: "If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record."

3 Under Section 10(k) of the Act, the Board, upon the filing of such an 8(b)(4)(D) charge, conducts an investigation to determine whether there is reasonable cause to believe that a violation of the Act has occurred. If reasonable cause exists, the Board is empowered and directed to hear and determine the dispute which led to the filing of the charge, unless the parties to the dispute "have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute." At the time the charges were filed with the Board, the evidence available to the Board indicated that all of the involved unions had an "agreed upon method" for the adjustment of the underlying dispute, i.e., had bound themselves to procedures of the National Joint Board for Settlement of Jurisdictional Disputes (hereafter sometimes referred to as the Joint Board). But the Board's investigation did not uncover any evidence that petitioner Don Cartage Company, or petitioner Michigan Cartagemen's Association (which intervened in the Board proceeding), had similarly agreed to be bound by the procedures of the Joint Board. Accordingly, in the absence of evidence that all parties to the dispute had agreed to be bound to the procedures of the Joint Board, the Board proceeded to hold its own hearing on the jurisdictional dispute, pursuant to the terms of Section 10(k).

4. After the hearing had been concluded, but before the Board issued its determination, the Ternstedt dispute was resolved by the execution of a Settlement Agreement between the Board's Regional Director and Millwrights 1102 and Carpenters Council, whereby the charged unions agreed that they were not:

entitled by means proscribed by Section 8(b)(4)(i) and (ii) of the National Labor Relations Act, as amended, to force or require Don Cartage Company to assign certain disputed job tasks performed by it, involving the erection and installation of machinery and equipment at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan, to employees who are members of, or represented by, Millwrights Local No. 1102 rather than to employees who are members of, or represented by, [Riggers 575]

to whom the work was assigned by Don Cartage Company.

The Unions further withdraw any request for assignment of said work performed by Don Cartage Company at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan.

Thereafter, the Board, after issuing a Notice to Show Cause "why . . . [it] should not approve the Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing." and duly considering the terms of the Settlement Agreement and the parties' responses to the Notice to Show Cause, issued its Decision and Order approving the Settlement Agreement and Quashing the Notice of Hearing.

5. Having opposed approval of the Settlement Agreement on the ground that the Board should have made a jurisdictional award extending beyond the Ternstedt project, petitioners filed their petitions for review of the Board's decision on September 9 and 10, 1965.

6. Following issuance of the Board's Decision and Order the Appeals Board of the National Joint Board for Settlement of Jurisdictional Disputes on August 25, 1965, issued an Opinion and Decision, referring to an international agreement dated September 27, 1958 (of which the Board was previously unaware) between the International Association of Bridge, Structural and Ornamental Iron Workers, the parent international union of Riggers 575, and the Michigan Cartagmen's Association, tending to indicate that petitioner Michigan Cartagmen's Association and petitioner Don Cartage Company, as a member of said Association, have long been, and are presently, bound to the procedures of the National Joint Board for Settlement of Jurisdictional Disputes. A true copy of that Opinion and Decision is attached hereto as Exhibit A. The pertinent provisions of the international agreement and the working rules incorporated therein are set forth and discussed on pp. 7-8 thereof. A true copy of the full text of the international agreement referred to in the Opinion and Decision is attached hereto as Exhibit B. Paragraph 6 of said international agreement provides as follows:

The Employer agrees to abide by the General Working Rules of this Association and to pay the scale of wages, work the schedule of hours and conform to the conditions of employment in force and effect in the locality in which the Employer is performing or is to perform work, provided that such conditions are not in violation of the National Labor Relations Act. The general working rules of the International Association of Bridge, Structural and Ornamental Iron Workers, as amended in 1960 and currently in effect, provide in Section 1 (attached hereto as Exhibit C) as follows:

The above claims are subject to trade agreements and decisions of the National Joint Board for the Settlement of Jurisdictional Disputes.

Further investigation discloses that the aforesaid international agreement is still in effect and appears to be applicable to Don Cartage and all members of the Michigan Cartagemen's Association.

7. Evidence of the aforesaid international agreement and working rules is highly material to this proceeding. For, as noted in paragraph 3, above, if it is found that petitioners Michigan Cartagemen's Association and Don Cartage Company were — like the involved unions — bound to the procedures of the Joint Board at the time the Board proceedings below were initiated, the Board was, and is, obligated to defer to the Joint Board for the purposes of hearing and determining the jurisdictional dispute presented. In short, a determination that the petitioners were bound to the procedures of the Joint Board necessarily would moot the issue as to the propriety of the Board's approval of Settlement Agreement and its refusal to make an award extending beyond the Ternstedt project, and thus would preclude the granting of the relief which petitioners here seek.

WHEREFORE, the Board prays that the Court remand this case to the Board for the purpose of adducing evidence, and determining in the light of such evidence, whether petitioners have "agreed upon

methods for the voluntary adjustment of" jurisdictional disputes; and taking such further action as this determination may warrant.

/s/ Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.,
this 8th day of November, 1965.

[Filed Nov. 9, 1965]

PETITION FOR HEARING IN BANC

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

The above-named Petitioners, Don Cartage Company, a Michigan Corporation, and Michigan Cartagemen's Association, Heavy Haulers Division, by their attorney of record, pursuant to Section 46(c) of Title 28 of the United States Code (62 Stat. 871 (1948)), hereby petition this Court for a Hearing in Banc in the above matter

In support of this Petition, Petitioners respectfully show:

1) Don Cartage Company and Michigan Cartagemen's Association, Heavy Haulers Division, pursuant to Section 10(f) of the National Labor Relations Act as amended (61 Stat. 136, 29 USC, Section 151 et seq., as amended by 73 Stat. 519) and pursuant to the Administrative Procedure Act, (60 Stat. 237, 5 USC, Section 1001, et seq.) have previously in the above cause petitioned this Court for a review of a final Order of the National Labor Relations Board; to wit, the Board's Order in Cases No. 7-CD-97 (1)-(5), said Order being reported at 154 NLRB No. 45. Said Petition for Review is hereby incorporated in full by reference.

2) Briefly, the aforementioned Petition for Review seeks review of an Order that originated in a charge filed by Don Cartage Company against Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and other unions alleging a violation of Section 8(b)(4)(D) of the National Labor Relations Act as

amended in that said Local No. 1102 and certain allied unions by means illegal under the National Labor Relations Act sought to force Don Cartage Company to re-assign certain work which Don Cartage had previously assigned to members of Riggers and Machinery Erectors, Machinery Movers, Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, at Plant No. 9 of the Ternstedt Division of General Motors Corporation in Detroit, Michigan. As a result of this charge and pursuant to the statutory scheme, a Hearing was held pursuant to Section 10(k) of the National Labor Relations Act as amended to determine which of the two claiming unions were entitled to the work in dispute. Said Hearing lasted from April 30, 1964 through July 31, 1964, covering some 34 days of Hearing and some 3,900 pages of transcript. Following the Hearing, counsel for the respective parties filed extensive briefs with the National Labor Relations Board, said briefs being filed on or about October 15, 1964. On or about May, 1965, Local No. 1102 and its allied unions, the details being set forth more specifically in Paragraph 2 of the Petition for Review, entered into an ex parte settlement agreement with the Board, said agreement having been initiated by Millwrights Local No. 1102 which allegedly settled the dispute. Your Petitioners as well as Local 575 refused to enter into said agreement. Nevertheless, on or about August 16, 1965, the Board, over protest, accepted the settlement agreement and dismissed the Notice of 10(k) Hearing, even though your Petitioners and Local 575 maintained that the Board had a statutory duty to assign the work in dispute.

3) The gravamen of the Petition for Review is that pursuant to the statutory scheme, Section 10(k) of the National Labor Relations Act as amended and as interpreted by the Supreme Court in NLRB v. Radio and Television Broadcast Engineers Union Local 1212, 364 US 573 (1961), (hereinafter referred to as the CBS case), the Order of the Board issued on August 16, 1965 is illegal and irregular because the Board has a mandate from Congress as interpreted by the Supreme

Court in CBS to specifically assign the work in dispute and not to accept ex parte settlement agreements. The details of the illegality and irregularity of the Board's Order are set forth in detail at Paragraph 3 of the Petition for Review.

4) This case is of unusual importance and is the type of case in which a Hearing in Banc would be most appropriate for the following reasons:

- a) Because the Board has, in Petitioners' view, deliberately deviated from the mandate of Congress as interpreted by the Supreme Court of the United States, an issue of great importance in the field of jurisdictional disputes has been raised by the Board's Order in this case;
- b) Section 10(k) became part of the Act by the amendments of 1947; that between 1947 and 1961 the Board followed a procedure which did not result in the assignment of the disputed work as required by said Section 10(k). As a result of the Board's dereliction in its duties, the Supreme Court in the CBS case in 1961 specifically required as follows:

"We conclude therefore that the Board's interpretation of its duty under Section 10(k) is wrong and that under that section it is the Board's responsibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision. Having failed to meet that responsibility in this case, the Board could not properly proceed under Section 10(c) to adjudicate the unfair labor practice charge . . .";
(365 US 573 at 586)

- c) Obviously the Board in this case has again departed from its required statutory duty as set forth in Section 10(k) of the Act and reverted to its activities prior to the CBS case;
- d) Not only has Congress mandated in Section 10(k) of the Act that the Board make a positive work assignment but the

Supreme Court in CBS has specifically confirmed this mandate and under such circumstances a review of an Order of an administrative agency that has deliberately ignored a Congressional mandate as verified by the highest Court of the land takes on a critical importance over and above the facts of the instant case.

5) There is precedent for a Court of Appeals to sit in Banc on a case involving the interpretation of the National Labor Relations Act as amended, for in 1955 the Third Circuit did sit in Banc in determining whether a District Court had jurisdiction in a suit brought for breach of a collective bargaining contract under Section 301 of the Act. See Association of Westinghouse Salaried Employees vs. Westinghouse Electric Corporation, 210 F.2d 623 (1954), aff'd 348 US 437 (1955).

WHEREFORE, Petitioners pray this Honorable Court that it hear the aforementioned Petition for Review on the merits in Banc pursuant to Section 46(c) of Title 28 of the United States Code.

/s/ George T. Roumell, Jr.
Attorney for Petitioners

* * *

Originally submitted:
October 12, 1965

Resubmitted:
November 9, 1965

* * *

PETITIONERS' DON CARTAGE ET AL ANSWER IN
OPPOSITION TO RESPONDENT'S MOTION TO ADDUCE
ALLEGEDLY NEWLY DISCOVERED EVIDENCE

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

COMES NOW DON CARTAGE COMPANY and MICHIGAN CARTAGE-MEN'S ASSOCIATION, HEAVY HAULERS' DIVISION, by their attorney of record, and answer Respondent's Motion to adduce allegedly newly discovered evidence with the following statements:

1) Answering Paragraph 1 of the Motion. Petitioners admit same but in doing so state that the Petitions for Review is more than the case of a losing litigant appealing. but rather the Petition seeks to uphold the integrity of the Congress of the United States and the Supreme Court of the United States as well as the validity of a contract made by the parties on this record and to prevent administrative agency tyranny in that the reviewing Petitions seek to have the National Labor Relations Board in the jurisdictional dispute determine the dispute as it is required:

a) by Section 10(k) of the National Labor Relations Act as amended (29 U.S.C. Section 160(k)) which in part provides:

"Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of Paragraph (4) (D) of Section 8(b). the Board is empowered and directed to hear and determine the dispute. . ." (emphasis added)

b) by the United States Supreme Court in its decision in NLRB v. Radio and Television Broadcast Engineers Union Local 1212. 364 US 573 (1961). which requires the Board to make a definite assignment; and

c) by the agreement of all parties on this record that the Board make an assignment.

It is Petitioners' further contention that the alleged Order and Decision in effect is illegal as it is a decision not to decide the issues as presented by the parties after a long and detailed hearing. The Petitioners Don Cartage et al consider the breach of the responsibilities of the National Labor Relations Board as aforementioned so fundamental and of such paramount importance that Petitioners have petitioned for a Hearing in Banc on the merits of the Review.

Further answering said Paragraph 1. Petitioners admit the correctness of the statutory reference to Section 10(e) and Section 10(f) in footnote 1 on page 1 of Respondent's Motion, but in so doing state that the Section in part provides:

"If either party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material and that there are reasonable grounds for the failure to adduce such evidence in the Hearing before the Board . . ." (emphasis added)

Hereinafter, the Petitioners will illustrate to the Court, pursuant to the emphasized portion of the quoted Section 10(e) above, that the evidence sought to be introduced as a matter of law is not material and that there are no reasonable grounds for the failure to produce it at the Hearing and that this material has been previously before the Board.

2. Answering Paragraph 2 of the Motion, Petitioners admit same but in so doing state that violation of Section 8(b)(4)(D) occurred and the previous and continuous harassment by Millwrights Local 1102 of all of the Specialty Rigging Contractors in Michigan who had entered into a collective bargaining contract with Riggers Local 575 pursuant to an order of the National Labor Relations Board, i.e., a Certification, was so severe that the Board permitted the Michigan Cartagmen's Association, Heavy Haulers' Division, to intervene in these proceedings so as to determine whether members of Millwrights Local 1102 or members of Riggers Local 575 should be assigned the work in dispute in the Michigan area. The Michigan Cartagmen's Association, Heavy Haulers' Division, is an association of ten (at the time of the original hearing, now eleven) Specialty Rigging Contractors who collectively bargain with and have entered into collective bargaining contracts with Riggers Local 575 pursuant to Board Certification.

3. Answering Paragraph 3, Petitioners incorporate their answer to Paragraph 2 above and reiterate that the Board, even by its Decision which is now on review herein, found a violation of 8(b)(4)(D).

Further answering said Paragraph 3, Petitioners state that the Board was justified in finding that the Don Cartage Company or the Michigan Cartagmen's Association have never agreed to be bound by

the procedures of the Joint Board. In support of this statement, Petitioners set forth the following salient facts:

a) In 1958, after a long and detailed hearing, the Board, in a case involving Don Cartage Company, found that neither Don Cartage nor the Michigan Cartagemen's Association has ever been bound contractually to use the National Joint Board. Specifically, in Millwrights Local 1102 (Don Cartage Company) 121 NLRB 101, the Board said at 103:

"Neither the Company nor the Association has ever been bound under any contractual arrangement or understanding requiring submission of jurisdictional disputes to the National Joint Board or to any other agency, or individual."

b) In 1960, after a two-week hearing, the Board held that General Riggers and Erectors, Inc., another member of the Association, was not bound by Joint Board procedures. Thus in Millwrights Local 1102, et al. (General Riggers and Erectors, Inc.), 127 NLRB 26 at 29, the Board said:

". . . Here, there is no agreed upon method for voluntarily adjusting jurisdictional disputes such as would free this Board from the Act's mandate to hear and determine the dispute."

c) As early as 1950, the very contract, or at least its predecessor, was put into evidence before the Board and the Board held in effect that the Employers were not bound to go to the Joint Board (see Local no. 1102 (Commercial Contracting Corporation), Case No. 7-CD-4). Also see Exhibits 8(A) and (B) which are attached hereto and are portions of the transcript of the 1950 case clearly showing that the Board has obtained knowledge through the years about any alleged contracts with the International Association of Iron Workers, and clearly knew of their existence, if they do exist, and yet properly chose to ignore

them, as they in no way stand for the proposition that the Board is now so brazenly asserting.

Further answering Paragraph 3, the statement by the Respondents that both unions had agreed to Joint Board procedures is obviously erroneous, for on the record of this very case, Millwrights Local 1102 and the Carpenters have admitted that they were not bound by Joint Board procedures. (See Exhibits 2(A), (B), (C), and (D), which are excerpts from the transcript in this case illustrating this point plus Exhibits 1(A) and (B) which are excerpts from Petitioners' Brief to the National Labor Relations Board emphasizing this point.)

Thus, under all the circumstances, the Board was justified in holding a hearing on the jurisdictional dispute, pursuant to the terms of Section 10(k).

4. Answering Paragraph 4, the statements made therein do not reflect the actual state of affairs. The Ternstedt dispute or any other dispute was not settled by the alleged Settlement Agreement and the Petitions for Review herein, in part, are directed to that proposition. Furthermore, the alleged Settlement Agreement was:

- a) Ex parte, having not been signed by any of your Petitioners, including Riggers Local 575;
- b) Signed over the protests of all Petitioners;
- c) Signed on May 20, 1965, after some 34 days of trial commencing April 30, 1964, the compiling of a 3.981 page record, the filing of extensive briefs by all parties on or about October 15, 1964, and after waiting seven months for the National Labor Relations Board to render a decision pursuant to the mandate of Section 10(k) of the Act.

Further answering said Paragraph 4, said Notice to Show Cause was issued on May 28, 1965, and, in particular, Don Cartage and the Michigan Cartaglemen's Association, as well as the other Petitioners, filed a detailed protest with arguments which even the majority of the Board admitted were "weighty" (see page 3, Exhibit No. 6, attached hereto).

5 Answering Paragraph 5. Petitioners herein incorporate their answers to Paragraph 4 above and in so doing state further that the Board, in its Paragraph 5, has misconstrued the gist of the opposition, said gist being the same as set forth in the Petitions for Review herein, plus a violation of due process and a sense of fair play in permitting the parties to litigate and then refusing to decide the issue. Petitioners do admit that they did file the Petitions for Review as stated therein for the reasons set forth in those Petitions and set forth in this Paragraph

6. Answering Paragraph 6. Petitioners deny the statements contained therein as same do not correctly represent the true state of affairs or the correct conclusions of law. Further answering said Paragraph 6, Petitioners state that the alleged agreement relied upon by the Labor Board is marked Exhibit B and attached to its Motion and is dated September 27, 1958. The alleged contract on its face makes absolutely no reference to the Joint Board for the Settlement of Jurisdictional Disputes or to any other method of arbitration. The Labor Board then refers to Exhibit C attached to its Motion which allegedly is an excerpt from the Work Rules of the International Iron Workers Union which were adopted in October, 1960, or two years after the signing of the alleged contract upon which the Board relies

It is elementary that arbitration must be rooted in consent by a contractual obligation which represents a meeting of the minds. See, e.g., Bernstein, Nudging and Shoving All Parties to a Jurisdictional Dispute Into Arbitration: The Dubious Procedure of National Steel, 78 Harv. L. Rev. 784, 786 (1965); Shulman, Reason, Contract, and Law in Labor Relations, 68 Harv. L. Rev. 999 (1955). See also Kelior, American Arbitration 87 (1948); Taylor, Effectuating the Labor Contract Through Arbitration, in The Profession of Labor Arbitration 20, 22 (McKelvey ed. 1957); Cox, Reflections Upon Labor Arbitration, 72 Harv. L. Rev. 1482, 1507 (1959); Hays, The Supreme Court and Labor Law, October Term, 1959, 60 Colum. L. Rev. 901, 924 (1960)

It is also elementary that Work Rules adopted after the contract is signed are not binding on the parties. See, e.g., Talent Representatives, Incorporated v. Maxwell, 28, CCH, Labor Cases, paragraph 69229 (New York Supreme Court, New York County, May 17, 1955, also cited 133 N.Y.L.J.).

Furthermore, as set forth in Paragraph 3 of this Answer at pages 4-6 herein, the Labor Board on three separate occasions, exclusive of the case now on review, had held that the Specialty Rigging Contractor members of the Michigan Cartagemen's Association including Don Cartage are not bound by Joint Board procedures. On these three occasions as illustrated by Exhibits 8(A) and (B) and by the fact that the hearings were long and detailed, the alleged contract which the Board is attempting to adduce has either been before the Board or the Board had knowledge of it at the time of the 34 day hearing in the current case. It is also pointed out to the Court that in the current case the Board found that neither the members of nor the Association were bound by Joint Board procedures. See Exhibit 6 attached hereto.

The opinion by John T. Dunlop, Chairman of the Appeal Board of the Joint Board set forth in the Labor Board's Motion and marked Exhibit A is absolutely meaningless as a matter of law and fact for the following reasons:

- a) There is no contractual basis as already pointed out herein for Mr. Dunlop to assert jurisdiction as a matter of court law;
- b) As just pointed out herein, as a matter of Labor Board law there is no basis for the Joint Board to assume jurisdiction;
- c) As a matter of fact the Joint Board's attention was called to the fact by Thomas Goodfellow, Inc. that it had no jurisdiction in the matter because there was no agreement as a matter of law to submit the dispute to the Joint Board. See Exhibit 3 attached hereto. Subsequently the Joint Board has attempted to assume jurisdiction and in each case protest has

been made by the Specialty Rigging Contractor involved on the basis that the Joint Board as a matter of law had no jurisdiction. See Exhibits 4 and 5 attached hereto.

d) The legal position of the Specialty Rigging Contractors was acknowledged on August 16, 1965, only nine days prior to the alleged opinion marketed Exhibit A by the writer of that opinion, John T. Dunlop. On August 16, 1965 John T. Dunlop wrote a letter to Charles Quig, Manager of the Michigan Cartaglemen's Association, one of your petitioners, which letter is marked Exhibit 7 and is attached hereto. The Court's attention is called to the last sentence in the first paragraph of said letter, which reads, "It is my conviction that only in this way may a practicable, viable and permanent meeting of the minds be achieved." Whether one is a devotee of Corbin or Williston, it is fundamental to the law of contracts that the first ingredient of a contract must be 'a meeting of minds'. Dunlop recognized this.

e) John T. Dunlop had previously rendered an alleged decision involving Jurisdictional dispute between Millwrights Local 1102 and Riggers Local 575 which was attached in the instant case and made it necessary that he become a partisan witness in these proceedings and thus the opinion submitted marked Exhibit A is not only an illegal assumption of jurisdiction but was rendered by a person who in effect was an advocate in these proceedings for one of the parties who is a litigant herein, to-wit, Millwrights Local 1102.

It becomes clear that based upon the facts of this record now, there is absolutely no reason for the Board to adduce additional evidence for as a matter of law the petitioners, Don Cartage and the Michigan Cartaglemen's Association, are not bound to Joint Board procedures.

7. Answering Paragraph 7 for the reasons stated in Paragraphs 1 through 6 above, the alleged International Agreement and Working

Rules are not material to these proceedings. As stated in Paragraphs 3 and 6 above, as a matter of Labor Board Law, Court Law, facts, and the actual admission of Joint Board Appeal Chairman, John T. Dunlop, the Petitioners, Don Cartage Company and the Michigan Cartagemen's Association, are not bound by Joint Board procedures.

Furthermore, it is not a correct statement that the unions involved herein are bound by Joint Board procedures for, as set forth in Paragraph 3 herein and as illustrated by Exhibits 1(A) and (B) and Exhibits 2(A) (B) (C) and (D) attached hereto, the record before the Board in this case is clear that at the time of the instant 10(k) hearing, Millwrights Local 1102 and its parent, the Carpenters Union, were not bound by Joint Board procedures.

Finally reference is made to the Labor Board's decision in the instant case, 154 NLRB No. 45, issued August 16, 1965, which is attached hereto as Exhibit 6 wherein the majority of the Board at page 3 referred to a new Joint Board and a new Agreement. The same reference was made at page 7. Even if it was conceded, which, of course, petitioners do not, that the 1958 contract based upon Working Rules that were not in existence at the time the contract was signed was bound to go to the Joint Board, this is now immaterial for there is a new Joint Board requiring a new agreement. The Labor Board has not alleged that the petitioners have signed this new agreement because in fact they have not.

In addition, one cannot help but raise the fact that although the Petitioners, Don Cartage and the Michigan Cartagemen's Association filed their Petition for review on September 7, 1965, and the Labor Board answered same on September 30, 1965, the Labor Board saw fit not to raise the question of allegedly newly discovered evidence until November 8, 1965 after the parties were in the process of designating records and preparing briefs. The illegal opinion that the Labor Board relies upon is dated August 26, 1965. This timing in light of the long history of the instant litigation and previous cases as well as the statements made in Paragraphs 1 through 6 above and the attached exhibits

hereto makes it obvious that the Labor Board is not serious in submitting this Motion to adduce allegedly newly discovered evidence. Furthermore the statement in Paragraph 7 implying that the Ternstedt dispute was settled is incorrect for the reasons stated in Paragraph 4 above.

WHEREFORE, the petitioners, Don Cartage Company and the Michigan Cartagemen's Association pray as follows:

1. That this Honorable Court deny in toto respondent's Motion for leave to adduce allegedly newly discovered evidence;
2. That, in the alternative, this Honorable Court decide as a matter of law based upon the alleged 1958 contract that your Petitioners, Don Cartage and the Michigan Cartagemen's Association are not bound by Joint Board procedures;
3. That if this Honorable Court is disposed to remand this case to the Labor Board pursuant to its request for the purpose of adducing allegedly newly discovered evidence, that this Honorable Court at the same time also direct the Labor Board to make an assignment of the disputed work as prayed for in the Petition for Review, absent any "agreed upon methods for the voluntary adjustment of" this jurisdictional dispute. However, this prayer is only made as an alternative for it is respectfully again suggested that respondents are not entitled to relief of adducing allegedly newly discovered evidence. This prayer is also made to avoid, in the event the Honorable Court does not agree with Petitioners' position as to the instant Motion, a multiplicity of future appeals.
4. That this Honorable Court grant such further relief that it thinks is necessary.

Dated this 20th day of November, 1965, at Detroit, Michigan.

/s/ George T. Roumell, Jr.
Attorney for Petitioners

* * *

* * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

In the Matter of:

Millwrights' Local #1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Riggers and Machinery Erectors, Machinery Movers Local Union #575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO.

Case Number
7-CD-97 (1), (2)

Don Cartage Company.

In the Matter of:

Millwrights' Local #1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Detroit and Wayne County, Oakland and Macomb Counties, Michigan, Building and Construction Trades Council, and Riggers and Machinery Erectors, Machinery Movers Local Union #575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (Don Cartage Company)

Case Number
7-CD-97 (3), (4), (5)

and

John Quinn, an individual.

2

555-A Book Building
Detroit, Michigan 48226
Thursday, April 30, 1964

Pursuant to notice, the above entitled matter came on for hearing at 9:30 o'clock, a.m.

BEFORE: MR. MILTON FISCHER, Hearing Officer.

* * * *

hereto makes it obvious that the Labor Board is not serious in submitting this Motion to adduce allegedly newly discovered evidence. Furthermore the statement in Paragraph 7 implying that the Ternstedt dispute was settled is incorrect for the reasons stated in Paragraph 4 above.

WHEREFORE, the petitioners, Don Cartage Company and the Michigan Cartagemen's Association pray as follows:

1. That this Honorable Court deny in toto respondent's Motion for leave to adduce allegedly newly discovered evidence;
2. That, in the alternative, this Honorable Court decide as a matter of law based upon the alleged 1958 contract that your Petitioners, Don Cartage and the Michigan Cartagemen's Association are not bound by Joint Board procedures;
3. That if this Honorable Court is disposed to remand this case to the Labor Board pursuant to its request for the purpose of adducing allegedly newly discovered evidence, that this Honorable Court at the same time also direct the Labor Board to make an assignment of the disputed work as prayed for in the Petition for Review, absent any "agreed upon methods for the voluntary adjustment of" this jurisdictional dispute. However, this prayer is only made as an alternative for it is respectfully again suggested that respondents are not entitled to relief of adducing allegedly newly discovered evidence. This prayer is also made to avoid, in the event the Honorable Court does not agree with Petitioners' position as to the instant Motion, a multiplicity of future appeals.
4. That this Honorable Court grant such further relief that it thinks is necessary.

Dated this 20th day of November, 1965, at Detroit, Michigan.

/s/ George T. Roumell, Jr.
Attorney for Petitioners

* * *

* * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

In the Matter of:

Millwrights' Local #1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, and Riggers and Machinery Erectors, Machinery Movers Local Union #575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO.

and

Don Cartage Company.

Case Number
7-CD-97 (1), (2)

In the Matter of:

Millwrights' Local #1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Detroit and Wayne County, Oakland and Macomb Counties, Michigan, Building and Construction Trades Council, and Riggers and Machinery Erectors, Machinery Movers Local Union #575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (Don Cartage Company).

and

John Quinn, an individual.

Case Number
7-CD-97 (3), (4), (5)

2

555-A Book Building
Detroit, Michigan 48226
Thursday, April 30, 1964

Pursuant to notice, the above entitled matter came on for hearing at 9:30 o'clock, a.m.

BEFORE: MR. MILTON FISCHER, Hearing Officer.

* * * * *

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Friday, May 1, 1964

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HEARING OFFICER: The stipulation may be received. In a further off the record discussion it has been stipulated by and between the parties hereto by their respective counsel that Don Cartage Company, a Michigan corporation, is engaged in Detroit, Michigan, in the moving

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and erection of heavy machinery and equipment, and that in the operations of its business Don Cartage Company annual performs services valued in excess of five hundred thousand dollars within the state of Michigan for the following named employers who each annually receive at their respective installations in Michigan goods and materials valued in excess of fifty thousand dollars, shipped to said installations directly from points located outside the state of Michigan, and shipped from said installations in Michigan products valued in excess of fifty thousand dollars directly to destinations located outside the state of Michigan.

Some of these employers from whom Don Cartage Company renders services are American Metal Products Company, Chrysler Corporation, Ford Motor Company, General Motors Corporation, Michigan Tool Company, Revere Copper and Brass Company and Western Electric Company, that at all times material to this proceeding Don Cartage was engaged pursuant to a contract for services valued in excess of four hundred thousand dollars for the moving, placement and erection of machinery and equipment at plant 9 Ternstedt Division, General Motors Corporation, located at West Chicago Boulevard near Schaefer Road, Detroit, Michigan, and the parties have further stipulated that Don Cartage Company is an employer within the meaning of the National

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Labor Relations Act. as amended. May it be so stipulated, gentlemen?

* * * *

40 MR. O'HARE: * * *

41 Now the Dunlop award would give certain work to the millwrights.

Our demand therefore and our position as to what constitute the disputed work is that we think this work, I am now going to state, should have been done by millwrights:

The removal of, crating, blocking and bracing above the machine skid, the opening of boxes of parts and the removal of protective covering, the laying out, drilling and installing of anchor bolts and nuts, and the cleaning and dressing of machine surfaces and component parts, the bolting, aligning -- incidentally, that word is aligning -- a-l-i-g-n-i-n-g, not l-i-n-i-n-g as shown in the notice of hearing.

MR. ROUMELL: Where are you reading?

MR. O'HARE: Page 2 of the Dunlop award -- the bolting, aligning, un-packaging machines, dressing and installation of small parts of pack-

42 aged machines, the handling of component parts of machine by hand and the bolting under those circumstances, the use of chainfalls and the assembly of non-package machines except heavy machine tools similar to heavy presses, certain installations relating to bolting horizontal and vertical surfaces which are detailed in the award, which I don't want to read into this record at this time, the final tightening, adjusting, leveling and aligning of all machines, the aligning and leveling of machines, including the use of jacks and chainfalls in the aligning and leveling operation, packaging of machines and the removal of all anchor bolts and nuts.

* * * * *

HEARING OFFICER: In other words, your contention is that is the whole of the dispute.

MR. O'HARE: That is all we ever claimed and, so far as I know, nobody else ever claimed there was to be any variation from the work as it was being done except us.

* * * * *

62 (Whereupon, the hearing resumed, pursuant to the taking of the recess, at 1.00 o'clock, p.m.)

HEARING OFFICER: Let's go back on the record please, Mr. McGuire. Gentlemen, I gave serious consideration to what I feel is the unanimous thinking here of all of the parties present and all parties who have appeared in this cause that their feeling is that the scope of the dispute in this hearing is really broader than set forth in the notice of hearing, and I wonder if I can or if you gentlemen would state for the record you all agree on that premise and it is your feeling that the Board should in determining this dispute make such an award as they think will resolve the whole issue in the whole area, not just at the site of Ternstedt?

Do each of you want to make a statement you agree with that on the record?

MR. ROUMELL: Mr. Hearing Officer, speaking for Don Cartage and the Michigan Cartagemen's Association, the statement you have just made is true as far as we are concerned.

HEARING OFFICER: Mr. Bennett, on behalf of the riggers?

MR. BENNETT: Yes, I am in accord with your thinking as far as the application of this award or this decision is concerned in terms of geographical area, and this type of dispute.

63 HEARING OFFICER: Very well, Mr. Prebenda, I think that was your inclination.

MR. PREBENDA: I agree wholeheartedly.

HEARING OFFICER: And yours, Mr. O'Hare?

MR. O'HARE: I agree that the Board should issue a determination which binds -- I am sorry -- which deals with all of these parties on all of the kind of work that is in dispute here.

HEARING OFFICER: In the whole area. In other words, you don't want it confined to just Ternstedt Division?

MR. O'HARE: I don't want it confined just to Ternstedt Division. I would have to know what you and Mr. Bennett mean by the whole area before I would be willing to limit it that far.

MR. BENNETT: My statement was geographical area but I am curious as to what you mean by all parties.

MR. O'HARE: I mean Millwrights local 1102 and Riggers 575, Carpenters District Council, Don Cartage Company, John Quinn, Michigan Cartagemen's Association, and the Detroit Building and Construction Trades.

HEARING OFFICER: At least in the Greater Detroit area or the area of the contract between the Cartagemen's Association and the union.

MR. O'HARE: Beyond that area. That's what I was afraid of.

64 HEARING OFFICER: I didn't say beyond that area.

MR. O'HARE: What I was afraid of you were limiting it.

MR. BENNETT: No.

HEARING OFFICER: No, I was not limiting it.

MR. O'HARE: I think it should apply among the parties represented in this hearing, wherever those parties may be found operating in conjunction with one another.

HEARING OFFICER: Wherever?

MR. O'HARE: Wherever.

HEARING OFFICER: At least we agree it should not be confined to the immediate situs of the dispute in this case, is that correct?

MR. O'HARE: Agreed.

HEARING OFFICER: Very well. Shall we proceed with our first witness, Mr. Roumell?

* * * *

JOHN BLUE

a witness called by and on behalf of the employer, Don Cartage, being first duly sworn, was examined and testified as follows:

* * * *

65 DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Your name is John Blue, is that correct? A. Yes.

Q. Where are you employed? A. Don Cartage Company.

Q. Is that in the city of Detroit?

Q. What is the address there? A. 5150 Sixteenth Street, Detroit.

Q. Detroit. In what capacity are you employed? A. Well, estimator, superintendent, vice president.

Q. You are vice president and superintendent, is that correct?

A. Yes.

Q. What type of business is Don Cartage Company in? A. Rigging and machinery moving.

Q. Will you explain just for the sake of the record just what rigging and moving of machinery is? A. The moving of all types of machinery, loading, hauling, unloading, setting, aligning, leveling, anchoring, assembly, and removal of machinery from various plants, loading on to rail cars, blocking for shipment, and unloading from rail cars, placing into the various plants. It includes the erection of equipment, to erect large presses that we have to erect with our own equipment, for lifting heavy weights, heavy components of presses.

66 Q. Does it include disassembly of equipment? A. Disassembly, yes.

* * * *

Q. Now are you familiar with the Ternstedt job that Don Cartage had at plant number 9 Chicago and Schaefer Road? A. Yes, sir, I estimated the job and I supervised the job as far as we went into the job -- after we had the job, I supervised it.

67 Q. What do you mean you estimated the job? A. In the estimating of the job was the cost for moving this machinery from their plant on Fort Street and hauling it to their plant number 9 on Chicago Boulevard, and unloading and setting, leveling, aligning and anchoring. It was competitive bids in other words.

Q. You prepared the bid for the job? A. Yes.

Q. On behalf of Don Cartage? A. Yes.

Q. Did you present the bid on behalf of Don Cartage? A. Yes.

Q. Who did you present it to? A. Mr. Rudy Mikulic, the head of purchasing at Ternstedt Corporation.

Q. You say the job involving moving a machine or machinery from one plant to another plant, is that correct? A. Yes.

Q. What was the distance between those plants, roughly speaking?

A. Oh, roughly, three to four miles I would say.

Q. What type of machinery was this involved? A. This was small stamping equipment. There were presses, rolling mills, for rolling out molding, metal molding, and polishing machines -- quite a bit of polishing equipment. This was stainless steel equipment, a bigger portion of it and requires a lot of polishing. And, as I said, there were quite a few presses involved, stamping presses.

68 Q. Now do you know what this machinery was used for? A. Well, yes, it -- Ternstedt manufactures automobile hardware at various plants, automobile plants. Actually their plant is called more or less a hardware plant for parts, you know, for the various automobiles that General Motors makes.

Q. Then was it machinery then used in production of automobiles? Is that what you are trying to say? A. Yes, parts for automobiles, body parts mostly.

Q. Now it is correct that you did receive a contract from Ternstedt to perform this work that you had described? A. Yes.

Q. Now when did you receive the contract, or how did you receive it? A. I received the purchase order number by telephone, which is not unusual. We go to work, we will start a job as long as the number comes from purchasing, purchase order number, and then they confirm it by formal purchase order. I received that number on the 8th of April.

Q. April? A. February, I am sorry.

Q. 1964? A. 1964, yes, sir.

Q. And after you received the number did you receive purchase orders? A. The following week. I believe it was the following week.

* * * * *

HEARING OFFICER:

* * * *

74 Q. And, based upon that proposal you got a job number? A. Yes.

Q. And after the job number you received DC 1 through DC 7, and when I say you I mean your company? A. Yes.

75 Q. Now, were there any other parts of the contract -- or let me withdraw that. Were there other purchase orders which you did not receive? A. Yes. If you will notice, these purchase orders don't come up to this base bid. I had a number that covered the base bid. They questioned me if it would be all right to issue these purchase orders as -- this job was set up in stages. This here was the advance move, tool room move and wheel room move. This covers that particular move plus the conversion, electrical conversion of the motors and wall openings and some cement work that I had to do, so -- a conveyor conversion -- and they explained to me in each stage of the job as it came up they would have the purchase orders issued to me ahead of time before I would start the next day to set up one through eight move plus the advance move, tool room move, and wheel room move. These purchase orders here cover that particular part.

* * * *

76 Q. Now, in other words, based on your testimony thus far the contract that you entered into with General Motors represented about four hundred thousand dollars? A. I believe that these added up to around four -- in the neighborhood of four hundred fifteen thousand.

77 Q. Was there anything in addition to these or any anticipation of further work in connection with this contract? A. Anticipated extras, you mean?

Q. Yes. A. Why, yes, sir. Before my contract was terminated I had I would say roughly twenty-five thousand in extra work that I had picked up through the job, electrical, and through my subcontractors and myself.

Q. So, in other words, by the time your contract was terminated you were up in the area of four hundred forty thousand dollars? A. It was in that area, yes, sir.

Q. Now, when you were bidding on this job was there any mention between you and officials of Ternstedt about time being an element on this job? A. Yes, sir. They called a meeting there with all of the bidders on this.

* * * *

79 Q. All right, now, Mr. Blue, did they indicate there was a tight time schedule on this? A. Yes, they wanted to impress that upon all of us, that it was a very critical schedule, and that some of their machines -- to not move them would justify keeping up their production, and they tried to impress us with the fact that they were behind, almost behind on production with the machines running all of the time, and they would really get behind with the moving -- you know -- and that the schedule would have to be kept.

Q. In other words, these machines were being used in current production? A. Yes, the machines would be -- roughly, the schedule, they give a week down, one week down on a machine. Like they would give us a group, like, and, move one, an "X" amount of machines in move one, and they would give us one week. That's what the schedule was. One week to take that -- to get that move made.

80 Q. And then that machine would go back into production? A. It would be back in production the following Monday at their plant 9 on Chicago Boulevard.

Q. In other words, it was used for current production of automobile parts? A. Yes.

Q. For current models? A. Yes. They stressed that fact very much.

* * * *

81 Q. Friday then I assume was February 7th, 1964? A. Yes, sir.

Q. Did you at that time have a meeting with anybody from General Motors on that date? From Ternstedt? A. Yes, sir.

Q. Who did you have the meeting with? A. I was called in --

Q. By who? A. By Mr. Elmer Fleck. He is the one that called

me to come in and have a meeting with Mr. Rudy Mikulic at Mr. Mikulic's office.

Q. Who is Mr. Rudy Mikulic? A. He is head of purchasing.

Q. Was there anybody else there? A. Mr. Al Light was there. He is head of personnel, Ternstedt personnel.

Q. This was prior to receiving the purchase number? A. Yes.

Q. What happened at this meeting, if anything? A. It is customary on a lot of jobs this size to come in as a little pre-start meeting to go through a few things they wanted to make sure was ironed out right. They were still stressing the scheduling of this job, and they questioned me as to what trades I used in making this move, and I told them that I used riggers for this type of work, the same as I always have done. I have worked

82 for years for Ternstedt Manufacturing, and used riggers, like we have always used here.

Q. Now, were millwrights mentioned during this conversation?

A. Yes, sir.

Q. By who, and in what connection? A. Mr. Light and Mr. Mikulic both asked me if I knew Mr. Jack Wood. I told them that I had never met the man.

* * * *

84 Q. (By Mr. Roumell) You stated that Mr. Mikulic or Mr. M. asked you whether you knew Jack Wood? A. Yes. I told him I had never met Mr. Wood. I might have talked to him on the telephone at some time, but I don't know if I had or not, but I had never met Mr. Wood. And he asked me if I knew George Horn, and I said yes, that I knew George. He said, 85 "Well, they tell me that you need millwrights on this job."

* * * *

87 Q. (By Mr. Roumell) Now, Mr. Blue, after you were told by Mr. Mikulic that Mr. Wood and Mr. Horn had indicated to him that you needed millwrights what did you reply? A. I told him it was the same type of job that we had been doing for them for years, and we used riggers on, and that I didn't anticipate any trouble. I told them not to worry. That we would do the job and get the job done.

Q. Anything else said at that meeting? A. They didn't question me any more, and I didn't question them. I didn't know what they were trying to get at. I knew they were still concerned about the schedule of jobs, and evidently they had this conversation with Mr. Wood and Mr. Horn that had upset them. It had them worried. It was up to them to see that the job went smooth.

Q. Now, at that time in relation to that meeting when did you learn you had the contract? A. I didn't know that I had the contract -- you never know until you get the purchase order number -- and I didn't know that until around one o'clock on Saturday, the following day.

Q. The following day? A. Yes.

Q. Now, it is your testimony, then, you began work on February 10, 1964? A. Yes, sir.

Q. Could you describe what was the first thing that Don Cartage did out there on that day? A. Well, the first part of the job was to load equipment at the Fort Street end of the job, load -- we started loading out there, and transporting to their plant 9 installation on Chicago Boulevard.

Q. Loading it and taking it over four miles? A. Yes. We had the crews over there to unload and set, align, level and anchor and so forth, at the Chicago Boulevard plant.

Q. How early in the job did you actually align, level and anchor, in terms of date? A. Oh, within that first week. The first week.

* * * * *

89 Q. You stated that you began loading at the Fort Street entrance.

A. Yes.

Q. On February 10th? A. Yes.

Q. Then tell us what next happened.

* * * * *

THE WITNESS: On this particular portion of the job the time limit wasn't too critical on this advance move and this tool room move, and the wheel room move. We had a much greater time -- this was not productive

equipment. What I mean, it wasn't in the production line. In fact, it was some maintenance equipment connected with this, non-productive, and we had more time. As I said, we had a greater time limit. I was supposed to run the job twenty-four hours a day, but on this particular phase

90 of the job I was working one eight-hour shift, because I was ahead of schedule, and this job was going very well. It was very satisfactory with Ternstedt, and everybody concerned.

Q. (By Mr. Roumell) All right, -- A. We were keeping ahead of schedule on this.

* * * *

91 Q. You say leveled and anchored? A. Yes, where they were specified to anchor.

Q. Were some of the machines actually leveled and anchored?

A. Yes, some few. The contract called for this equipment to be set on vibration pads, specified air lock with specified vibration pads. Some machines they would have anchored even though it was on the vibration pad. Normally you don't anchor the ones on the vibration mounts, but some of these were anchored.

Q. Who did this particular leveling and anchoring work? A. Riggers.

Q. Was any of the aligning work done at this time? A. Yes, it all has to be aligned according to the layout.

Q. Were there some machines at this early stage that had to be aligned? A. Yes, polishing machines.

Q. Who did that aligning? A. Riggers.

Q. Was that done in the first week, the first day, or how long did it take you to move these machines? A. Those machines?

Q. Yes. Machines. A. This advance move was spread out -- I couldn't get it all at one -- you know -- say one week or nothing like that.

92 They couldn't break it loose from what it was doing at the Fort Street end at that time. It was spread out, and I had to adjust my crews according to the way that I could get the equipment released from the Fort Street end. There was some new equipment that come in there, that was added to this stuff, this contract.

* * * *

94 Q. Now, going to the second week of the move -- we went from February 10th -- we did the second week -- the first week -- and that would get us into about the 17th. A. Yes.

Q. Fitting the time around there, do you recall what you moved at that time? A. The second week of the job, wasn't too much done because there was very little released the second week of the job. The third week we got the major portion of the equipment.

Q. The what week? A. Third week.

Q. Tell us about that equipment in the third week. What type was it? Where did you move it from? A. This was tool room equipment, and we had a lot of miscellaneous polishing equipment in this advance move, which included polishing machines, presses, tool room equipment, 95 as I explained before. We cleaned the rest of that out, which was lathes, drill presses, mills, shapers.

Q. Of the machinery that you are describing now, could you tell us what was the largest, in terms of weight? A. The largest piece that we moved on this advance move was a press.

* * * *

Q. (By Mr. Roumell) In the third week? A. This advance move was still going the third week.

Q. All right. The move of the third week. What was the largest piece of equipment that you moved? A. A press that weighed between twenty and twenty-five tons.

Q. Now, the first week do you recall what the largest piece of equipment was? A. The first week the largest piece of equipment I would say was probably ten to twelve ton, a press.

* * * *

97 Q. All right, now, what type of machinery during the third week were you moving? A. It was practically the same type as we had been moving the first and second week, which was polishing equipment, tool room equipment, and this wheel room equipment, and some new machines there that had come in that we uncrated and moved into location, set,

aligned and leveled. The same type of equipment -- the whole move was more or less -- each move was a repetition of the other move. You would have a mixture of presses, polishing equipment, and rolling mills. That was the biggest portion of the complete move, was repetitious, one stage to the next.

Q. And you mentioned set, align and level. Did you on the third week set, align and level some machines? A. Yes.

Q. What machines? A. Presses and polishing equipment, and we had some grinders that went into the tool room, precision grinders.

Q. Now, who performed the aligning and leveling and anchor work? A. Riggers.

Q. And they were your employees? A. Our employees that belonged to Local 575.

* * * * *

105 Q. (By Mr. Roumell) Now, Mr. Blue, previously in this hearing you mentioned specifications on the job, and this was an eight-phase job, is that correct? A. Actually it was nine. The advance move, and then moves one through eight.

* * * * *

107 Q. (By Mr. Roumell) In looking at Exhibit 10, Don Cartage Exhibit 10, on the eight phases following the advance move am I correct that on each phase you were only given seven days? A. Yes.

Q. So it was a seven-day phase, and on the advance move of course you were given --

HEARING OFFICER: The first to the 29th.

THE WITNESS: The 10th to the 29th.

MR. ROUMELL: Which is 19 days.

Q. (By Mr. Roumell) Now, you finished the first phase, then, by the 28th, did you? A. The advanced move was finished. The advance move.

Q. The advance move? A. By the 29th, yes, sir.

* * * * *

108 Q. (By Mr. Roumell) A little louder, please, Mr. Blue. Now, Mr. Blue, between the 10th and 29th of February -- limiting yourself to that time -- were you approached by any representative of the Millwrights concerning this job? You, personally? A. I was not.

109 Q. Were you ever approached on this job at any time by any -- A. The only ones that approached me was the steward for Jervis Webb Company, which was on Friday before the phase one started. I don't recall the date.

* * * *

Q. (By Mr. Roumell) Jervis Webb was another contractor on the job? A. He was on the job when we moved in there, on an over-head conveyor job.

* * * *

Q. Now, the person who approached you, you state that person was a steward on that job? A. Yes, sir.

Q. Does that mean he was a millwright? A. Yes, he was a millwright steward.

Q. What date do you say he approached you, or when? A. I believe that was the 28th. It was on that Friday before the end of the month.
110 He approached me about using millwrights on the job.

* * * *

111 Q. (By Mr. Roumell) Did this gentleman identify himself? A. He said he was a steward for the Jervis-Webb Company, Millwrights.

Q. Did he use the word "Millwrights"? A. Yes.

* * * *

112 Q. (By Mr. Roumell) And this gentleman who introduced himself as a millweight steward, what did he say to you on this date, if you recall? A. He told me that we were doing their work; that he would be out of work in a few days, and that we were doing their work.

113 Q. When he said "their work" what was he referring to? A. Millwrights' work.

Q. Did he specify what work? A. He started quoting the Dunlop agreement to me. I told him I knew pretty well what was in there. I had heard it a few times. He asked me when we were going to put on some millwrights, and I told him the job had been assigned to us, and I wasn't planning on putting on any, and he was quoting the Dunlop agreement to me most of the time. I told him that I wasn't there to negotiate any contracts. That wasn't my job. I was there to get the job done. He mentioned that we would probably have to put millwrights on before this job went very far.

Q. All right, now. You say that on March 2nd, which was a Monday, you began the next phase after the advance move? A. Yes, sir.

Q. And that was the phase that had to be done in seven days?

A. Yes.

HEARING OFFICER: Is that what you referred to as the production phase earlier?

THE WITNESS: Move number one was the first production move, yes, sir.

HEARING OFFICER: Very well.

Q. (By Mr. Roumell) For the sake of clarity in the record, I notice that in DC 10 they actually refer to the advance move as phase 114 one, and then they call phase two, and under phase two they have the eight moves, is that correct? A. Yes.

Q. So when we talk about -- when we talk about this March 2nd then you are in phase two, the production move, is that correct? A. Yes.

Q. And you had how many days to complete that? A. Seven days.

Q. And on that date -- I'm referring to March 2nd now, Mr. Blue -- what did your company do on that day in terms of work? A. We were loading presses and polishing equipment from their Fort Street plant and hauling them to the Chicago Boulevard plant, unloading them, set, aligning and leveling, and anchoring.

Q. And how much did these presses weigh? A. They were of various sizes. They went all of the way from three tons, and some in

that group would go probably seventeen or eighteen tons of weight.

* * * *

115 Q. Now, who did all of this work on March 2nd, in terms of employees? A. Our employees, Riggers.

Q. Riggers did all of this work? A. Yes.

* * * *

116 Q. Now, on the second day of March, the day we are talking about, did anybody contact you about millwrights on that day? A. No, sir.

Q. Were you on the job on March 3, 1964? A. Yes.

117 Q. When did you get to the job? A. Around seven-thirty in the morning.

Q. What plant did you go to? A. The Chicago Boulevard plant, Plant 9.

Q. When you got there did you find anything unusual? A. Yes, sir. There was a picket line.

Q. Were there any picket signs? A. Yes, sir.

Q. Did you see anybody on the picket line? A. Anyone that I knew?

Q. No. Did you see anybody in the picket line? A. Yes.

Q. Did you see anybody you knew? A. Yes, sir.

Q. Who did you see? A. I saw Charles Duncan, Mr. Horn -- George Horn was there, the steward that I don't know his name. I know his face. I talked with him.

Q. This same one you talked to on the 28th of February? A. Yes.

HEARING OFFICER: The man who said he was a steward for Jervis Webb?

THE WITNESS: Yes. That's the only ones that I recognized.

118 HEARING OFFICER: Where were they doing this picketing?

THE WITNESS: There were two entrances into this plant. One entrance was on Chicago Boulevard, and the other was a side entrance, what they call an east entrance there, where the employees went in.

HEARING OFFICER: Was that the facility you used for egress and ingress? The side, or the Chicago Boulevard side?

THE WITNESS: The side is the entrance that the employees used. They had to pick up the badges there from Ternstedt at that clock house.

HEARING OFFICER: Who used the Chicago Boulevard entrance?

THE WITNESS: We used the Chicago Boulevard entrance for our trucks coming in with the equipment. That was the only truck gate they had open, the Chicago Boulevard entrance.

HEARING OFFICER: Where were the pickets with respect to the gate?

THE WITNESS: They were at the Chicago Boulevard gate and the east entrance gate.

HEARING OFFICER: Do you recall what legend the picket sign carried, or what it said?

THE WITNESS: I recall it had "Don Cartage unfair to millwrights Local 1102", or whatever their number is.

HEARING OFFICER: 1152 -- 1102?

THE WITNESS: And something pertaining to the Dunlop agreement was on there.

* * * *

119 Q. (By Mr. Roumell) What did you do after you saw the picket line, if anything? A. I went into the plant.

Q. You went into the plant? A. Yes.

Q. Where did you go in the plant? A. The plant engineer had an office in the plant there, and they called me into that shortly after I got in there.

Q. Who was that? A. The plant engineer.

Q. Do you know his name? A. Jack Conture.

Q. Then what happened to you, if anything? A. Well, Mr. Conture started asking me what I am going to do and how fast I am going to do it. Put pressure on me that it was very important --

* * * *

120 THE WITNESS: C-o-n-t-u-r-e. I am just about positive of that.

As I say, he was putting pressure on -- this was very serious, and we had to get something done very shortly. I believe the first step -- the first deadline he give me was ten o'clock.

Q. (By Mr. Roumell) What time was this? A. This was probably between seven and eight o'clock, when I first met him there, but he was telling me that he had to call his boss at ten o'clock, and that he wanted some answers by ten.

Q. Now, let's digress just for a little bit. At this particular time did you have any -- did you, Don Cartage, have any sub-contractors on the job? A. Yes.

Q. All right, which ones did you have? A. The Electrical contractor, Howard Electric Company, their men were working at the time, at the time when I got in there, and --

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121 Q. Now, after you were told this by Mr. Conture -- you indicated this was around seven-thirty or eight o'clock in the morning? A. Yes.

Q. Then what happened, if anything? A. Well, I -- my men were working, my riggers were working, of course, unloading equipment, setting it, leveling it, and so on.

* * * * *

122 Q. (By Mr. Roumell) You indicated your people were working?

A. Yes, sir.

Q. Then what happened, if anything? A. As I said, we were still unloading machines. We were bringing machines over from Fort Street, and I -- my normal procedure was going ahead. That is, the Riggers unloading and setting machines. And I didn't have too much time to look around because this plant engineer didn't let me get very far from him. He put a little pressure on me.

Q. Now, did you have a chance to contact your electrical contractor at this time? A. I talked to the electrical contractor myself, and asked him what --

Q. Who was that? A. It was Howard Electric. The party I talked to was Mr. Lloyd Hart, the superintendent.

Q. This was the same morning we are talking about? A. Yes, sir. I asked him if the electricians were going to keep working. He told me they were going to work until the steward found out from the Building
123 Trades if this was an authorized picket line. He said if it was they would walk out.

Q. Well, did they continue working through that day? A. No, sir.

Q. What did they do? A. I would say around -- well, around nine-thirty they went home.

HEARING OFFICER: When you say "they" who do you mean?

THE WITNESS: The electricians.

HEARING OFFICER: How about the Riggers?

THE WITNESS: The Riggers worked.

Q. (By Mr. Roumell) Were you there when the electricians went home? A. Yes.

Q. Did you make any inquiry as to why they were going home?
A. Yes.

Q. Who did you make the inquiry to? A. Mr. Lloyd Hart, superintendent for Howard Electric.

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125 Q. (By Mr. Roumell) You indicated Mr. Hart responded to your inquiry as to why these people were going home? A. Yes.

Q. What did he tell you? A. He told me that his steward, the electricians' steward, had called Mr. Diamond, and it was an authorized --

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Q. (By Mr. Roumell) By the way, do you know the electricians'
126 steward's name? A. No.

Q. The men did go home? A. They went home.

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Q. Now, after the electricians walked out what happened, if anything, next? A. Well, we continued work, the riggers did, and Jack

Conture continued to put pressure on me, what was I going to do, and --

* * * *

127 Q. (By Mr. Roumell) What did Jack Conture do?

HEARING OFFICER: Ask him what he said or did.

Q. (By Mr. Roumell) What did he say? A. He kept setting deadlines. His last deadline was two-thirty, that he claimed he had to call his boss then and tell him something.

Q. What did you do in response to these deadlines? A. In response I was on the telephone all of the time that I could be, talking to Mr. Richards.

HEARING OFFICER: Who is Mr. Richards?

THE WITNESS: Mr. Royce Richards.

HEARING OFFICER: Who is he?

THE WITNESS: Our treasurer and manager of Don Cartage.

Q. (By Mr. Roumell) And this is Mr. Royce Richards sitting in this room? A. Yes.

* * * *

Q. (By Mr. Roumell) Now, when was the first time that morning that you called Mr. Richards? About when? A. I would say shortly after eight o'clock.

Q. Was that the only conversation you had with him on that day?

A. We had several conversations on that day by telephone.

* * * *

128 Q. (By Mr. Roumell) Let's talk about the first conversation. What was said by you to Mr. Richards? A. I told Mr. Richards that we would have to get that picket line removed some way or other that day or Ternstedt would terminate my contract. It was a very serious situation. We didn't want to lose the contract.

Q. What did Mr. Richards say? A. Mr. Richards said he was getting a hold of his attorney to try to get some information as to what we could do to get it removed.

Q. Then after that conversation did you have another phone conversation with Mr. Richards? A. We had, as I said, several conversations that day. I would check with him or he would check with me as to what progress each one was making.

Q. At any time during these conversations was there any indication that either you -- did you tell Mr. Richards or did Mr. Richards tell you -- I will withdraw that. Did you, at any time during the day involved, meet with any representative of the Millwrights on the job?

129 A. Not until the afternoon, around three o'clock.

Q. And who did you meet with? A. George Horn.

Q. And who is Mr. George Horn? A. Business manager for Millwrights Local Number 1102.

Q. Did you advise Mr. Richards that you were meeting with Mr. George Horn? A. We talked it over. That was our last telephone conversation before I had the meeting with Mr. Horn. We talked it over, and we decided between ourselves that we would agree to put some millwrights to work if we could get the picket line removed.

* * * *

130 Q. (By Mr. Roumell) I think my question was, was there any conversation at that time about contacting the union.

HEARING OFFICER: State the conversation, to the best of your recollection, Mr. Blue.

THE WITNESS: The last conversation?

Q. (By Mr. Roumell) Yes. A. The last conversation, we talked of who to contact. I believe Mr. Richards told me that he had talked to some of the officials from the union.

Q. On that day? A. Yes.

HEARING OFFICER: What union?

THE WITNESS: Millwrights' union. And --

131 Q. (By Mr. Roumell) Did he name names? A. He didn't name any names.

Q. What else was said? A. He told me he hadn't been able to get a hold of the attorney yet. That he was still trying. We agreed then at this last conversation to go ahead and contact Mr. Horn and see about getting some men on the job and have the picket line removed.

Q. And you contacted Mr. Horn? A. Yes.

Q. Where did you meet him, and when? A. I met him at this east gate where the picket line was.

HEARING OFFICER: Who was present at this meeting besides yourself and Mr. Horn, if anyone?

THE WITNESS: Mr. Charles Duncan was there.

Q. (By Mr. Roumell) Who is Mr. Charles Duncan, if you know?

A. I believe he is an assistant business agent, with the Millwrights.

Q. You knew him previous to this time? A. Yes, sir.

Q. Did you know Mr. George Horn previous to this time? A. Yes.

Q. Now, did you have a conversation with Mr. Horn? A. Yes, sir.

132 Q. What did you say to Mr. Horn? A. I told him that we had decided to put some millwrights to work, and I wanted to talk it over with him as to how many we would need, and so on, and he quoted some of the Dunlop agreement to me.

* * * * *

THE WITNESS: He quoted some of the Dunlop agreement to me.

Q. (By Mr. Roumell) As a matter of fact, he whipped it out, didn't he? A. Yes, and wanted me to read it.

* * * * *

THE WITNESS: He told me that if we wanted to put millwrights to work we would have to sign a contract, and I told Mr. Horn then that that was out of my jurisdiction, that I didn't negotiate any of our labor contracts, and that Mr. Richards took care of that, and we would have to talk to Mr. Richards.

Q. (By Mr. Roumell) When you say Mr. Richards, you mean Mr. Royce Richards? A. Yes.

* * * * *

133 Q. (By Mr. Roumell) What else was said, if anything? A. When I told him we would have to talk to Mr. Royce Richards he suggested that we go down to the hamburger place to a telephone. He didn't have access into the building at that time. And we went to the hamburger stand on the corner, where there is a pay phone there, and I called Mr. Royce Richards, and I told him that Mr. Horn wouldn't give us millwrights without a contract.

Q. What did Mr. Richards respond to that? A. Mr. Richards said that he couldn't sign a contract right off the record like that. That he would have to go through the proper channels.

Q. Did he say what the proper channels were? A. I never asked him. And then he wanted to talk to Mr. George Horn.

Q. Now was this a phone booth in the hamburger place or one of these open -- A. Just a phone in the corner.

Q. Was George Horn standing there when you were making this call? A. Yes.

Q. So what happened when Mr. Richards said that he wanted to talk to George Horn, if anything? A. I called Mr. Horn to the phone. I told Mr. Horn -- he was standing there by me -- that Royce Richards wanted to talk to him.

134 Q. And did Mr. Horn take the phone? A. Yes.

Q. And I assume you didn't hear what Mr. Richards said to Mr. Horn? A. No, sir.

Q. Did you hear what Mr. Horn said to Mr. Richards? A. Well, yes. I don't just recall all of the conversation, but I remember him telling Mr. Richards that he would have to sign a contract if he wanted men.

Q. How long did that conversation between Richards and Horn last on the phone? A. Oh, I would say two minutes, probably.

Q. How long had your conversation with Richards lasted on the phone at that time? A. Probably a minute.

Q. Did you talk to Richards after Horn got through talking to him on that same phone call? A. No, sir.

Q. Richards and Horn -- Horn hung up then, after he got through talking? A. Yes, sir.

Q. Then what happened, if anything? A. I went back -- we went back to the plant; Mr. George Horn and Mr. Charles Duncan was with us in the car, and I went back into the plant. The plant engineer, Mr. Jack
135 Conture, wanted to know what had happened, and I told him what had happened.

Q. Then what did you do? A. He made a telephone call.

Q. In your presence? A. Yes. He called his boss at Fort Street.

HEARING OFFICER: Called who?

THE WITNESS: His boss. Conture's boss. Which was the plant manager, Mr. Beaudry. And at the end of his conversation he asked me if I could go over to Fort Street with him, that they were going to terminate the contract.

Q. (By Mr. Roumell) That's what Conture told you? A. Yes.

Q. Now, just a few minutes ago you stated that "we had decided to put millwrights on", is that correct? A. Yes.

Q. What prompted that decision? A. Well, we had a pretty nice contract, and we didn't want to lost it. We were trying to salvage the job, anything to keep the job going.

Q. And it is true about three o'clock is when you talked to Royce Richards and made that decision? A. Yes.

Q. When was the last time before that three o'clock discussion with Mr. Royce Richards that you had any discussion of any kind with
136 Mr. Conture, the plant engineer, at Ternstedt? A. When?

Q. Yes. A. That was a continuous conversation all day with Conture. I had trouble getting to the telephone. He was right with me all of the time.

Q. Well, prior to this last conversation that you told us about with Conture could you tell us what Conture said to you or what you said to him prior to calling Royce Richards at three o'clock? A. Conture told me just prior to that that he was giving me until six o'clock, if we didn't

have the picket line away from them that they would terminate the contract.

Q. So even -- was that the first time he mentioned termination?
A. That was the first time I recall him mentioning termination.

Q. That was before your three o'clock talk with Royce Richards and your talk with George Horn? A. Yes. In the conversation with Royce Richards at three o'clock there --

Q. Of course this is the approximate time? A. Yes -- I told him I was positive they were not bluffing and that they were going to terminate the contract if we couldn't do something to remove that picket line that day.

137 HEARING OFFICER: By when?

THE WITNESS: By six o'clock.

Q. (By Mr. Roumell) Did Mr. Conture, when he said this -- when he set this six o'clock deadline -- did he give a reason why he was going to terminate? A. Well, his reason was on account of the scheduling of the job, the move.

Q. He told you that? A. Yes.

Q. What did he actually say? A. He said due to the tight schedule there that they could not afford to have any tie-up in the movement, that they would have to terminate the contract.

Q. Did he mention anything else about the scheduling at that time? A. Well, the scheduling -- we were ahead -- that they were well pleased with the scheduling until the picket line had held us up, stopped us that day; that everything had been satisfactory, every phase of the job was; but he told me due to the tightness of that schedule that they could not afford to have any delays, and they would terminate the contract.

Q. He didn't mention why it was tight, did he? He didn't mention that at that time? In his own words? A. Why it was tight?

138 Q. Yes. A. Well, we knew the schedule was tight from the start.

Q. All right, now, after you talked to George Horn you testified that you then went back to Mr. Conture and told him the results of your

conference with Horn personally and your telephonic conference with Mr. Richards and Mr. Horn? Correct? A. Yes.

Q. And you also stated that Mr. Conture then called Mr. Beaudry, and you were told to go over to the main office? Is that correct?

A. Yes, they asked me if I could go over to the Fort Street office.

Q. Was the word "terminate" mentioned at that time? A. Before I was asked to go to Fort Street?

Q. No.

HEARING OFFICER: At this last conversation?

Q. (By Mr. Roumell) You testified when you were asked to go to Fort Street they said, "We are going to terminate the contract"?

A. Terminate the contract, yes.

Q. Now, what happened after Conture said that? A. We left shortly after that to go to Fort Street. He asked me if I could go to Fort Street.

Q. Conture and yourself went to Fort Street? A. Yes.

139 Q. Did you arrive there? A. Yes.

Q. That was about a four-mile drive, you indicated? A. Yes.

Q. What did you do when you arrived there, if anything? A. I was called in to Mr. Beaudry's office. Mr. Beaudry was there, purchasing was there.

Q. Who in purchasing? A. Mr. Mikulic in purchasing.

Q. Was Mr. Light there? A. Mr. Light was not there. The comptroller was there -- several of the plant engineering group was there -- and they told me, Mr. Beaudry told me, that due to the tight schedule they were on on this particular job that they could not afford to have any tie-ups on the job, any work stoppages, and that they were going to have to terminate the contract.

Q. But the fact of the matter is you didn't have a work stoppage with the riggers, did you? A. No.

Q. What work stoppage were they talking about? A. The other trades were stopped.

HEARING OFFICER: Was anyone else from Don Cartage out at Mr. Beaudry's office with you, or were you the only one there?

THE WITNESS: I was the only one there.

140 Q. (By Mr. Roumell) This job was your job? A. Yes.

Q. It was your responsibility? A. Yes.

Q. As superintendent and vice president? A. Yes.

Q. Now, you say the other trades were out. What do you mean by that? A. The other trades quit working on account of the picket line.

HEARING OFFICER: What trades do you mean? Will you tell us?

THE WITNESS: The electrical contractors, there were sheet metal contractors in there -- they weren't working for me, they were not working for me -- I believe there were cement contractors in there, conveyor contractors --

HEARING OFFICER: They all walked out? The tradesmen all walked out?

THE WITNESS: Yes.

* * * *

141 Q. [By Mr. Roumell] What else was said by Mr. Beaudry at this meeting? A. Mr. Beaudry told me, as I said, that he was being forced to terminate the contract on account of the tight schedule, and they had decided to give it to some general contractor, this job.

HEARING OFFICER: Did he at that time terminate the contract?

THE WITNESS: Yes, sir.

HEARING OFFICER: Did he give you anything in writing?

THE WITNESS: Not until the next morning, I received a telegram.

HEARING OFFICER: That evening he told you that you were terminated at Ternstedt?

THE WITNESS: Yes, sir, he told me -- I was working a double shift, and he told me to finish out that shift, which would be around three-thirty the next morning, and get our equipment out then.

Q. (By Mr. Roumell) Did you have any contact with Mr. Royce Richards while you were in Beaudry's office? A. When Mr. Beaudry

told me that he was going to terminate the contract I asked him if I could call my office before he made the final decision, and he said yes.

Q. Did you call your office? A. Yes.

142 Q. Who did you call? A. Royce Richards.

Q. Did you have a conversation with Royce Richards at that time?

A. Yes. I told Royce Richards that they were going to terminate the contract, and -- he had had some conversation with Mr. Beaudry during the day, and I asked him if he wanted to have a final say there with him before he did terminate the contract, and he said that he did, that he would like to talk to him. And I asked Mr. Beaudry to talk with him, and he did. I don't know what Royce's conversation was, however, at that time.

* * * *

143 Q. (By Mr. Roumell) When we were off the record you indicated Richards and Beaudry were on the telephone, and what did Beaudry say to Richards, if you heard it? A. As I heard that conversation, Mr. Beaudry told Mr. Richards that he had decided to give -- he said that General Motors had decided to give jobs of that nature to a general contractor because they could not have any work stoppages.

Q. Did they mention the name of the general contractor in this case? A. To Richards, no, he didn't mention his name.

Q. Now, the phone conversation ended, is that correct? A. Yes.

Q. Did Beaudry then say anything to you? A. He was apologetic to me. Said they were well pleased with our performance on the job, but due to the tightness of the schedule they could not have any work stoppages, and they were afraid even if we could get some kind of an agreement worked out with the Millwrights that we might have friction between the Riggers and Millwrights, and they -- that there would be work stoppages afterwards.

Q. Did you move off the job immediately, or what did you do then?

A. We moved off at the finish of the shift. We were working on our second shift then.

Q. Who permitted that? A. Ternstedt asked me to finish out that shift, around three-thirty the next morning.

Q. You indicated you did receive a formal notice? A. Yes.

Q. The next morning? A. I believe it was the next morning, yes.

Q. I show you proposed exhibit DC 11. Have you seen that previously? A. Yes.

Q. What is that? A. Termination of the contract.

Q. It's a Western Union telegram? A. Yes.

Q. And DC 12, do you recognize that? A. Yes.

Q. Have you seen that before? A. Yes.

145 Q. What is that? A. It is a telegram, that is, a correction of this telegram.

Q. DC 12 is a correction of DC 11? A. Yes. You see, they had a telephone conversation here, where it was not a telephone conversation. It was a correction of that.

Q. DC 11 corrects 12? A. Yes.

* * * *

MR. ROUMELL: Now, Mr. Hearing Officer, for the record I would like to show that I originally identified two telegrams, DC 11 and DC 12, because they were out of order, and we have now revised the identification so that DC 11 is a telegram which was identified by the witness as being received on March 4, 1964 at 10:30 a.m., and DC 12 is another telegram from Ternstedt to Don Cartage dated March 4, 1964, and received at 11:00 a.m.

Q. (By Mr. Roumell) Am I correct, witness, that the later telegram -- which is now DC 12 -- corrects the earlier telegram at 10:30, which is DC 11? A. Yes.

* * * *

148

Tuesday, May 5, 1964.

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151

DIRECT EXAMINATION (Continued)

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152

BY MR. ROUMELL:

Q. I believe also you testified that Mr. Horn, representing the Millwrights, asked you to sign a contract that afternoon, the afternoon of the 4th of March. A. Yes.

Q. Now, then, -- A. It was the 3rd of March.

Q. The 3rd of March. You did not sign that contract? A. No.

Q. Did you tell us why? A. I am not authorized to sign a contract, any of the labor contracts with our company. I don't negotiate the contracts. So I could not sign a contract with Mr. Horn. That is, any labor contracts. Nor anyone else.

* * * * *

153 Q. (By Mr. Roumell) I show you this document marked proposed exhibit 13.

* * * * *

Q. What is the document? A. This is a union agreement, contract, with Machinery Movers, Riggers and Erectors, Local 575, with Michigan Cartagemen's Association and Don Cartage.

Q. You have seen this contract before? A. Yes.

Q. This is the contract that you operate under? A. Yes.

* * * * *

154 HEARING OFFICER: Don Cartage Exhibit 13 may be admitted into evidence.

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155

CROSS EXAMINATION

BY MR. O'HARE:

* * * * *

159 Q. On which of the proposals, DC 8, DC 9 or DC 10, was the purchase order number issued, if you know? A. DC 10, and the alternate. This, as I stated, would actually go with this.

Q. You are referring to DC 9 going with DC 10? A. Yes, sir.

Q. Was DC 8 out of the picture by that time? A. This is actually an alternate; the three, DC 8, 9 and 10, would tie in. I was issued an order to cover the group. I might state here, with this proposal here, Mr. O'Hare, --

Q. Yes, I am listening. A. -- was listings of all of the machinery involved in this particular proposal.

HEARING OFFICER: Am I correct, Mr. Blue, in saying one purchase order number covered all of the proposals?

THE WITNESS: Yes, these are alternates that they wanted to get in before they issued the order. They didn't want to start out with an
160 extra right off the first date; they wanted to cover these alternates with the original order number.

* * * *

163 Q. [By Mr. O'Hare] The Board may know more about this than I do, Mr. Blue, and this may not be necessary on the record, but will you tell me what the effect is of receiving a telephone purchase order from Ternstedt Division? What you take that to mean when you receive such a purchase order number? A. Well, it is customary in this business -- especially this last year or two years -- a lot of the paper work comes out fast, and the jobs, a lot of them, are awarded to someone fast; and it is customary on a lot of occasions I receive purchase order numbers over the telephone from purchasing agents, which gives me the authority to go ahead and start the job, and then they follow with a confirmation in the form of a purchase order.

* * * *

184

CROSS EXAMINATION

BY MR. BENNETT:

* * * *

185 Q. Now, you have testified that you were the person who estimated the cost of this job regarding setting figures for items priced separately below on DC 8, 9 and 10, is that correct? A. Yes.

Q. And in making these estimates you considered such component matters as labor, material cost, equipment and so forth, isn't that true?

A. Yes.

Q. In making this estimate did you consider the pay of the riggers which you employed and with whom you had a contract, in making this
186 estimate? A. Yes.

Q. Did you contemplate or include an estimate in that labor figure for the use of millwrights? A. No, sir.

Q. Why not? A. Well, I had planned on doing the job as we had been doing, in the same order as we had been doing it for years, the same type of job, and we traditionally had used riggers for that type of work, so I based my prices on using the riggers for this job.

Q. It is not customary for you to use millwrights for this work?

A. No.

Q. Did General Motors tell you to consider the use of Millwrights in making your estimate and bid? A. No, sir.

Q. Did General Motors tell you to consider the use of any particular trade or craft in making your bid? A. No, sir.

Q. DC 10, which is the proposal that we have discussed here regarding the description of the work for the Ternstedt job, states at the outset that "We, the undersigned" -- in this case being Don Cartage -- "hereby propose to furnish all material, labor, equipment, facilities" et cetera. Now, you use the words "furnish all labor." What is your understanding of the use of that word, those words? A. That is to furnish all labor to do the job, do it most efficiently and in the most economical manner.
187

Q. Do you feel General Motors in any way has a right to tell you what kind of labor to use on this job, or what craft to use? A. They might have the right, Mr. Bennett, but they didn't tell me any particular crafts that I had to use.

Q. You took this as a direction to you that you were to make an estimate within the limits of whatever labor you wanted to use, is that correct? A. Yes.

Q. Where it says "Description of Work" it says "Furnish all labor, equipment, material required to load, transport, unload, position according to print, level, anchor and install equipment to operating condition," and so forth? A. Yes.

Q. Did General Motors at any time tell you what type of labor you should use in deciding how to do all of these things? A. No, sir.

Q. What type of craftsmen or labor did you decide to use to accomplish all of these things? A. Riggers from Riggers Local 575.

Q. Were these men capable of doing all of these things? A. Yes.

188 Q. Did they, in fact, do them? A. Yes.

Q. Had they done so in the past? A. Yes.

Q. Were the millwrights capable of doing all of these things?

A. No, sir.

Q. Why not? A. They don't have the experience and the know-how that the riggers have in this field.

* * * *

206 Q. And General Motors had given you until six o'clock to get that picket line off the job? A. Yes.

Q. Or they would terminate your contract? A. Yes.

207 Q. And they, in fact, did so? A. Yes, sir.

Q. Do you have the authority to sign an agreement in the nature of the so-called Dunlop agreement on behalf of Don Cartage Company?

A. No, sir.

Q. Did Mr. Horn demand of you that you sign the so-called Dunlop agreement on the job site about three o'clock that afternoon? A. He did not demand that I sign the Dunlop agreement. He produced the Dunlop agreement and asked me to read it. I told him that we were no part of the Dunlop agreement -- that we were no party to the Dunlop agreement. I knew pretty well what was in it. I had read it before.

Q. Who authorized you to tell Mr. Horn that you would put millwrights on the job if they would take the picket line off? A. Mr. Royce Richards. We talked it over, and we decided to try to salvage the contract; that under pressure we would put them on.

Q And in your opinion, based on your professional capacity which you have testified to, did you need millwrights on this job? A. No.

209

REDIRECT EXAMINATION

BY MR. ROUMELL:

212 Q. Mr. Blue, on cross examination you stated you saw the picket line, is that correct? A. Yes.

213 HEARING OFFICER: Why don't you ask him what it said on the legend? We are still waiting for it.

Q. (By Mr. Roumell) Do you recall what it said? A. The picket signs?

Q. Yes. A. Yes, as I recall, "Don Cartage Company discriminates against the Dunlop agreement, Millwrights Local No. 1102", and, as I recall it, it referred to the Building Trades Council on the same side. I never took too much notice of the signs.

HEARING OFFICER: Did it say anything about Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinity, if you remember?

THE WITNESS: As I recall, that probably was in there, too, Mr. Fischer.

HEARING OFFICER: Very well. Next question.

Q. (By Mr. Roumell) You also stated you knew what it meant, is that correct? A. Yes, sir. I made that statement.

215 HEARING OFFICER: Mr. Blue, will you answer the question as to what you knew at that time, what it meant to you, when you saw it.

THE WITNESS: As I explained before, I knew that it meant that my contract would be terminated, which I wanted to do everything that I could to save my contract.

HEARING OFFICER: Very well. Next question.

Q. (By Mr. Roumell) Did it mean anything else to you, if anything?

A. Well, in the past we had been threatened with picket lines before, and pressuring us to use millwrights, and I knew that I either had to sign a contract -- I was positive of that -- or else lose this contract, to get rid of that picket line.

216 Q. You knew this from your past experience, is that what you are saying? A. Yes.

Q. You did state in the past you had on occasion used millwrights, is that correct? A. Yes, under pressure.

Q. What do you mean by "under pressure"? A. Threats of picket lines.

* * * *

219 HEARING OFFICER: Do you know for how long Don Cartage Company has been under contract with the Riggers? Of your personal knowledge?

THE WITNESS: I would say twenty-five years. That's approximate.

HEARING OFFICER: In answer to Mr. Bennett's question and Mr. Roumell's question you said something about being a general contractor. Is Don Cartage Company a specialized cartage company for moving and installation of machinery, or is it a general contractor?

THE WITNESS: We are specialized in heavy machinery moving and rigging work. Some jobs you are asked in your specifications from the manufacturer, whoever is having the job done, that you bid other portions of the work as a rigging contractor, to get the rigging part you have to bid other portions of the job.

* * * *

223 R. ROYCE RICHARDS

a witness called by and on behalf of the employer, Don Cartage, being first duly sworn, was examined and testified, as follows:

HEARING OFFICER Will you give the reporter your full name and address, please?

THE WITNESS: R. Royce Richards, 1304 Lafayette Towers, West, Detroit, Michigan.

DIRECT EXAMINATION
BY MR. ROUMELL:

Q. Where are you employed, Mr. Richards? A. Don Cartage Company here in Detroit.

224 Q. In what capacity are you employed with Don Cartage? A. I am treasurer and general manager.

Q. How long have you been treasurer and general manager? A. I have been treasurer for about five years, and general manager for about three.

* * * * *

225 Q. Who is the president of the company? A. Mr. Donald Richards, Sr.
Q. Who is Mr. Donald Richards in relation to you? A. My father.
Q. Do you know of your own knowledge how long Don Cartage has been in this business of machinery moving and erecting? A. Well, somewhere between twenty-six and thirty years.

* * * * *

Q. Now, are you familiar with the Detroit Ternstedt job which Mr. Blue referred to in his testimony? A. Yes, I am.

226 Q. When did you first become familiar with that job? A. Well, probably during January, if I remember the dates right, when we were first bidding the job, Mr. Blue told me that there was a large job coming up for bid at Ternstedt. And then I watched him figuring the job, giving a subcontractor prices, and I was very aware that he was spending an awful lot of time at Ternstedt's and on Ternstedt bids.

Q. Now, when is the next time that you had any contact with the job in any connection after January? A. Well, I was called at my office around I believe February 8th -- 7th or 8th -- in that area -- by Mr. Jack Wood, the gentleman sitting over here, and Mr. Wood --

Q. Well, let's stop right there. You say you received a call in the early part of February at your office from Mr. Wood? A. Yes.

* * * * *

227 Q. Then what did you say? A. I took the call, received the call, and told him who I was. And he introduced himself and questioned me about if I was going to use millwrights on the Ternstedt job or not.

Q. What did you tell him? A. I told him that I wasn't really familiar with what was going on there or what the scope of the work was at that time, but that I would check with Mr. Blue, and that I would talk with him later.

* * * *

Q. Now, you say this was around February 8, 1964 that you are talking about? A. Yes, on a Friday.

Q. After that date did you have any further contact either personally or by phone with Mr. Jack Wood? A. Yes, I did.

* * * *

228 Q. Where were you when you received the call? A. I was in my office.

Q. Did he identify himself? A. Yes, he did.

Q. What did he say? A. He told me he was Jack Wood from the Building Trades Council, and wanted to know what my decision was in regards to the Ternstedt job.

Q. What did you tell him, if anything? A. I told him that I had discussed the job with John Blue, and being as the work was the same type of work that we had always done at Ternstedts and had always used Riggers on, 575, that I could see no need to change our procedure now; that I intended to do the job with riggers.

Q. And did Mr. Wood make any response to that? A. Yes, he did. He told me that he was quite disappointed in my decision, and that he would have to call a meeting and something would have to be done about this decision.

* * * *

229 Q. Now, after that conversation that you have just related did you ever have any further conversation with Mr. Wood? A. Yes, I did.

Q. When? A. On the day of the strike, which was March 3rd, I believe.

Q. Yes. A. I called Mr. Wood and talked with --

HEARING OFFICER: When you say "strike" you mean the day the picketing action was initiated at the site of Ternstedt?

THE WITNESS: Yes.

Q. (By Mr. Roumell) You called Mr. Wood? A. Yes.

Q. And did you reach him? A. Yes, I did. He was in his office, and I talked with him, and I asked him what I had to do to get that picket line off the Ternstedt gate; that the pressure was on me from my customer; and he told me that it was no longer in his hands, and that I would have to talk to a Mr. Weir, and so I told him all right, that I would get ahold of Mr. Weir.

* * * *

230 Q. Now, referring you to the events of March 3, 1964, can you tell us approximately what time you reached your office on that day in the morning? A. It was about even eight o'clock, somewhere around that time.

Q. All right. Did anything happen when you reached your office? A. I no sooner had walked in when there was a phone call from Mr. John Blue, who was over at Ternstedt's, and he told me they had a picket line at the Ternstedt plant, at Plant 9.

Q. Did he describe it to you? A. I asked him who had the picket line, and he said the millwrights and the building trades council, and I asked him, "What do they want?" And he said, "I don't know. I haven't talked with anyone yet."

Q. Then what did you say? A. I told him, well, that I would handle things from my end, and let him stand by and we would coordinate to see what we could do about getting this thing settled.

231 Q. Was that the end of that conversation? A. The end of that conversation, yes.

Q. Then what did you do next, if anything? A. Actually I had

several calls come in on another matter, on other matters, but I was anticipating a call from the Millwrights, hoping they would state what they wanted, as I didn't know, having no idea of what they really wanted outside of my own past knowledge of what they wanted.

Q. What was that past knowledge? A. Well, everywhere they had put a picket line up on me they had wanted to put millwrights to work.

Q. Have you had picket lines before? A. I have had picket lines before.

Q. Where at? A. Packard, Utica Bend Corporation.

Q. Where else? A. Chrysler Trenton, I believe, put either a picket line or a threat; it has been either one or the other for many, many years.

Q. Any place else you know of? A. I had trouble in Flint, Michigan. They threatened to strike there, a series of strikes or picket lines for many, many years.

Q. Did you have any inquiry or threat this current year at any other location? A. I had them on DeLuxe Die, the DeLuxe Die job. I had many phone calls regarding that job in January.

232 Q. In January, 1964? A. Yes. And at that time I believe Mr. George Horn was the gentleman I talked to, stating this was going to get worse as time went by, and I was going to either have to do something or they were going to do something. They were going to put their people to work.

* * * *

Q. Now, going back to the morning of March 3rd, 1964, you got your call from Blue, you called Wood -- did you call Wood immediately after talking to him? A. No, I didn't.

Q. What did you do? A. I tried to get ahold of the Cartage Association to get some reference from an attorney. I was starting right then and there to try to locate an attorney.

Q. All right. May I ask you something? I would like to have this record show this. Now, at that particular time, at that particular moment, did Don Cartage have an attorney? A. No, we did not.

233 Q. Now, when you say no does that mean you had no attorney who practiced labor law? A. That's right. No labor law attorney.

Q. Did you have any other attorney on a regular basis? A. Not on a retainer basis.

Q. All right. So you began to call Mr. Quigg? A. Yes.

Q. Were you able to reach Mr. Quigg?

MR. PREBENDA: I think that should be --

HEARING OFFICER: Identify Mr. Quigg.

Q. (By Mr. Roumell) Who is Mr. Quigg? A. The business manager for the Michigan Cartagemen's Association.

Q. Give his full name. A. Charles Quigg, the business manager for the Michigan Cartagemen's Association.

Q. Why did you call him? A. I knew the Millwrights' union had a court case pending against the Michigan Cartagemen's Association, and I knew there was an attorney involved for the Association there, and I thought I might get someone familiar with this problem who could either help me or get me some help, tell me where to go to get it. And I was not able to get Mr. Quigg. He was out somewhere. But I left word for him to call me.

234 Q. Then what did you do, if anything? A. Then I called Riggers' Local 575 and asked them if they knew --

Q. Who did you talk to there? A. Mr. Nick Kova.

Q. Who is Nick Kova? A. I don't know his official title.

Q. Did you know him? A. Yes, I know him, and he helps out around the local. I asked him if he knew what the problem was really about. I had no official claims, and I wanted to know what it was really about. And he said that he didn't know. Some of his people -- that Mr. Morrison was over there at the time, and he was waiting for a report from Dick Morrison. That's Dick Morrison sitting there in the back of the room. President of the Local.

HEARING OFFICER: You said he was out where? At the picket line at Ternstedt?

THE WITNESS: At the picket line at Ternstedt, investigating, and I asked him if he knew any good attorneys that I could call.

Q. (By Mr. Roumell) Will you correct that?

HEARING OFFICER: You called Mr. Roumell?

MR. ROUMELL: No.

Q. (By Mr. Roumell) If you will permit me, you did call the Riggers' attorney at that time? A. Yes, I did, and he referred me to someone who was quite familiar with the case. Mr. Don Prebenda.

235

Q. And you tried to reach Mr. Prebenda? A. Yes, I did.

Q. And Mr. Prebenda of course suggested possibly other attorneys? A. Yes, he told me he could not help me, being as he was tied in with the Riggers' Local.

Q. And did you try to get ahold of the other attorneys? A. Yes, I tried at least four different attorneys. I can't remember all of their names. But everyone -- I talked to their office -- they were either in court or somewhere else, and so I left word with several attorneys.

Q. At that time you had not been in contact with my office? You had not called my office? A. No, I had not.

Q. Now, what did you do after you couldn't reach an attorney? Did you finally reach an attorney? A. Yes, I did.

Q. Who did you reach? A. I reached Mr. Haggerty, the first attorney I could reach and who could spend any amount of time with me.

Q. All right. What arrangements did you make with Mr. Haggerty?

236

HEARING OFFICER: Just a minute. Why is this essential, may I ask? I know it's interesting background, but I don't think we are getting into the pith of my problem, if you don't mind my saying so.

MR. ROUMELL: I'm glad you said so, but I disagree with you and I think I will tie this up in about a couple of minutes.

HEARING OFFICER: Very well, subject to connection.

MR. ROUMELL: The subject was brought out by Mr. Blue, "We told the union we were trying to contact counsel."

HEARING OFFICER: Very well. Proceed.

Q. (By Mr. Roumell) You made arrangements with Mr. Haggerty to meet with him? A. No, I just talked with Mr. Haggerty. He informed me he had some appointments that afternoon, and that it would be the following day before I could really get any of his time.

Q. All right. Then what did you do, if anything? A. I stayed in my office and received what seemed like hundreds of phone calls about this particular problem.

Q. Did you talk to John Blue again? A. Yes. John Blue was in contact with me several times during the day. I couldn't tell you just how many times.

* * * *

237 Q. All right, now, after that conversation -- strike that. In that
238 conversation did Mr. Blue advise you of any statement from General Motors people? A. Mr. Blue told me that he hadn't been able to get away from plant engineering, the plant engineering office. That no matter where he went, they were hanging onto his shirt tail; that he couldn't even go into the men's room without them following him. And if he went to the phone they stood beside the phone. He said he couldn't make a move without them right next to him, demanding for him to tell them when this thing would be settled.

* * * *

239 Q. And you have also testified that you talked to Mr. Weir? A. Yes.

Q. About what time on this day, March 3rd, did you talk to Mr. Weir? A. I believe I said one o'clock, but as I think it over that doesn't sound right. I believe along towards two or three o'clock. I lost track of time during the day here.

Q. Did you call Weir? A. I called Weir in the afternoon, yes.

Q. Did you know Mr. Weir prior to this? A. I had met him.

Q. Did you talk to him? A. Yes, I did.

Q. What did you say to him? A. I told him that I was referred to
240 him by Mr. Wood, and I asked him what I needed to do to get the picket line off the Ternstedt job.

Q. What did he tell you? A. He told me that I had to put his people to work, and we got into quite a long conversation about putting his people to work.

Q. Well, relate it to us. A. There was some mention of the Dunlop agreement, and that he was pretty well fed up with Paul Allen of the Riggers and the Riggers Union, and this thing had gone as far as he was going to see it go, and he was going to bring this to a head.

* * * *

MR. O'HARE: We would be willing to stipulate L. M. Boots Weir is Secretary-Treasurer of the Carpenters' District Council of Detroit.

241 HEARING OFFICER: That stipulation, is it all right with you gentlemen? All right, it may be so stipulated.

* * * *

Q. (By Mr. Roumell) Mr. Richards, you indicated that sometime on March 3, 1964, after talking to Jack Wood, you did call Mr. Boots Weir? A. Yes.

Q. Now, if I recall your testimony, you asked him what could be done about the picket line, is that correct? A. Yes, I did.

Q. Now, what did he tell you? A. He told me that I was going to have to put his people to work on that project, and, as I said before, he went on to elaborate on his personal feelings towards Local 575 and Paul Allen's lack of cooperation, and I think he mentioned the Dunlop decision, although he didn't go into the Dunlop decision. And as I talked with him I told him I stood to lose my contract, because just prior to talking with Mr. Weir I had had a phone call from Mr. Beaudry over at the Ternstedt plant.

Q. Did you tell him about the phone call from Beaudry? A. Yes, I did. And I told him that these people meant business, that from what Mr. Blue said and from what they had said over there -- meaning Beaudry and one of the engineers -- that it looked like they might terminate my contract; and that I had to get something done the next morning, I had to go back the next morning to work; and I said this matter I brought up

with Mr. George Horn on many occasions in the past, I had referred him to the Michigan Cartagemen's Association with this problem, to have a meeting and sit down and negotiate a contract with us the way we negotiate contracts with others as a group; and I said that as of yet I didn't know of anything that had been done about it, outside of just a lot of talk.

Q. What did Mr. Weir say in response to that, if anything? A. Mr. Weir said he was willing to meet with the Michigan Cartagemen's Association; that he would be glad to. And I said, "All right, on a temporary basis," I said, "I will put some of your men to work." And I said that I

243 would have Mr. Blue get together with Mr. Horn, who was over at the job site, and determine the number of men, get an agreement on the number of men that we would have to hire in order to get the project started again.

HEARING OFFICER: Mr. Richards, did you have in mind then a composite crew of riggers and millwrights, or was that still fluid in your mind?

THE WITNESS: I didn't know just what he would do with them. I really didn't care. I mean I was trying to solve the problem, was trying to salvage the contract. I was buying time, actually.

HEARING OFFICER: Very well.

THE WITNESS: He said, "All right." He said, "That's all right with me." I said, "Well, now, are you going to remove the picket line after they get an agreement?" He said, "I won't be in my office. I have a meeting with one of the City boards" -- the Board of Education, I believe -- and I said, "Does Mr. Horn have the authority to remove that picket line"? And he said, "No, George Horn does not have that authority." And I asked him would he give the authority to George Horn, providing we would put on an agreeable number of men, if he would give him the authority to remove the picket line, in the event I couldn't get ahold of Mr. Weir, so the problem could be solved. He said yes, that he would designate that authority to George Horn. And I told him that meanwhile

244 I would get together with the Cartagemen's Association and my

attorney and that we would work while we were talking this thing out, coming to some kind of a settlement. And that was the end of our conversation.

* * * *

Q. (By Mr. Roumell) Now, after you got through talking with Mr. Weir did you contact Mr. Blue again? A. A little later on, yes. An hour or so had gone by, and I contacted John Blue, or he contacted me. I don't remember specifically.

Q. All right. What did Mr. Blue tell you at that time? A. He asked me how much progress had been made, and I told him of my conversation with Mr. Weir, and I told him to get together with Mr. Horn and get together on the size of the crews, how many millwrights we would have to put on the project, get an agreement, and hold a meeting again. So he said that he would do this.

Q. In other words, as general manager you had made a decision to take on millwrights? A. I was going to put millwrights on the project, yes.

245 Q. Could you explain why you made that decision? A. I had no other choice.

HEARING OFFICER: I think it has been answered, Mr. Roumell. He was trying to salvage a job. I think he testified to that three or four times.

THE WITNESS: That's right. I was just trying to save the contract.

Q. (By Mr. Roumell) You also indicated in your conversation with Mr. Weir you mentioned that Beaudry had called you? A. Yes.

Q. Now, did Mr. Beaudry call you before you talked to Mr. Weir? A. He called me before and he called me after.

Q. Tell us about the conversation before. What did Mr. Beaudry tell you? A. Mr. Beaudry introduced himself as Mr. Beaudry, and --

Q. Did he give you his title? A. He told me he was the -- the plant manager over at Ternstedt Fort Street Division, and was I aware of the picket line. I told him yes. And he said, "You are aware of the seriousness of the situation?", and I said, "I believe I am." And he said, "Well, let me inform you how serious it is."

Q. Did he proceed to? A. Yes, he did.

Q. Tell us what he said. A. He gave me the example of a machine that had been scheduled to be moved. He said, "This is how we have set the project up." He said, "We have taken a machine and we have produced -- either through overtime or extra people -- we have produced a given quantity of certain parts to carry us through the time we feel it will take that machine to be moved and back in operation," and he said, "The machine has to be there and running before we run out of parts," and he said, "Now, as it stands, we have lost one day on this contract." He said, "Our schedule did not allow for one day lost on the contract." He said, "I can't have another day lost. You will either have to have something done by tomorrow morning or we are going to have to take steps to get it done in a different way."

* * * *

Q. That second conversation with Beaudry what transpired?

A. Beaudry asked me how far I had gone with settling this thing, and I said that I had just talked with Mr. Weir and it looked like we were going to be in agreement -- "It looks like we are going to be in agreement, or we are going to work tomorrow morning," and he said, "I hope so. My people are meeting." He said, "We are looking at other ways to handle this situation." He said, "We don't want any further labor troubles." He said, "Now, this is something for you to consider, too. Will there be any further labor troubles?" And I said that it didn't look like there would be. I said that I couldn't promise anything at that time. I said that as far as I was concerned we were going to get this problem ironed out while we worked, so he asked me to call him back when I got something decided, and I told him at that time that we were in agreement to put some millwrights on the job to at least get the job going again while we talked and negotiated between us.

Q. All right. Then you say you talked to Blue again? A. Yes. I talked with Blue.

Q. When was this? About what time during the day? A. I would say about three-thirty or so, if I am correct there. As I say, time was very important to me at that time, and I was just on one phone after another. But I knew that it was getting late in the day.

Q. Can you recall and relate what Blue told you in that conversation? A. I asked John Blue if he and George Horn had reached an agreement on the number of men to put to work, and he said "We have", and then he said, "But I think they want you to sign a contract," and I asked to talk to George Horn. George got on the phone, and I said, "George, I

248 understand we have agreement to put men to work," and he said, "Yes, we will have men to work tomorrow morning." He said, "I will supply you with the men," he said, "but there is one other thing," he said. "You are going to have to sign a contract first." And of course this bothered me because I had never signed a Millwright contract before, and I stated this to George. I said, "You have always supplied me with men in the past without me signing a contract." I said, "Why is it so important that I sign this contract now?"

Q. What did he say to you? A. He said, "Well, for the protection of the men." And I said, "George, you can protect the men just by pulling them off the job if we should abuse them or mistreat them in any way." I said, "You know that." And he said -- I told him I would like some time to get together with my legal counsel. I said, "I don't know the legality of this thing, but I need at least until tomorrow noon to get ahold of an attorney. I have been having a lot of trouble locating people." I said, "Why don't you put them to work," I said, "and by noon tomorrow I will have you some answers, or you can pull them back off the job again." I said, "You know I have to get you something." "Well," he said -- he said that he didn't have the authority to do that; that he couldn't do that, that those were his orders, that I would sign the contract or there would be no men. So I informed him that I couldn't sign the contract under those conditions, and I also informed him that we stood to lose that contract if we didn't go to work the next morning.

Q. Did Mr. Horn say anything else to you during that conversation?

A. I don't recall right now that he did.

Q. And that was the end of that conversation? A. Yes.

Q. Now, why wouldn't you agree to sign an agreement at that time?

A. Well, I was confused legally as to whether or not I could have a contract with two different unions concerning the same work, and also I had informed him in the past the Michigan Cartagemen's Association, Heavy Haulers Division, had negotiated the contract, and the Millwrights' Union should approach us as a group, that we were all related in the industry, we were all going to act as a group, and negotiate that contract like we do the riggers' contract or with anyone else.

Q. All right, now, I assume when you referred to contracts -- I will show you Exhibit DC 13. Have you seen that document before?

A. Yes, I have.

250 Q. And what is that document? A. This is a contract with Machinery Movers, Riggers and Erectors, Local 575, and Michigan Cartagmen's Association, Heavy Haulers Division.

Q. Is this the contract you just referred to in your testimony?

A. Yes, this is the contract I had with the Riggers.

Q. And you had it at the time of your conversation with George Horn? A. Yes.

Q. And it is still in effect today? A. Yes, it is. That is the contract.

Q. Now, what else? What next happened, if anything? A. Well, I don't know if it was the same phone conversation -- whether John Blue was on the phone yet, or shortly after -- I believe it was a new phone conversation -- John Blue called me -- he called me from Ternstedt's and said that he was on his way to a meeting at the Fort Street plant of Ternstedt, and the purpose of the meeting, as he was told, was to terminate the contract. So I told him to call me from there, when he found out more.

Q. Were you called from there? A. Yes, I was.

Q. Who called you? A. John Blue was on the phone; the secretary there placed the call -- Mr. Beaudry's secretary, as I understand --

251 and John Blue was on the phone, and he told me they had just decided to terminate the contract. This was along about six or six-thirty, in that area.

Q. What did Beaudry actually tell you? A. I asked to talk with Mr. Beaudry, and he told me -- he said, "Well, General Motors feels that due to the importance of the work involved and the critical time schedule", and that they have such a great lack of confidence in the ability of the Riggers and the Millwrights to get along together without further work stoppages, that he was going to have to assign this contract to someone else. And I asked him who did he mean, someone else. And he said a general contractor. He didn't state who. So I then asked him if I signed a millwrights contract and did get the millwrights back to work the next day -- would get the millwrights back to work the next day with the riggers, and get the program going again -- would he still extend my contract to me. And he rephrased what I have just told you. He said he had no confidence -- that General Motors had no confidence in the ability at that time for the Millwrights and Riggers to get along without further work stoppages, and that he could not stand another loss on the project, that too much time had already been lost. He also told me he felt very badly about the situation. That he had admired our company principle, and he also complimented us on the procedure on the job on the work that we had done to

252 date; that we had done a very good job and we had been up to and ahead of schedule in all cases, and he wished that we had been able to continue -- he wished that we could continue -- but that he couldn't take the risk.

* * * *

253 HEARING OFFICER: Tell me, while you are at it, while you are
254 at it -- while you are checking something -- about what percentage
of the whole contract was completed, dollar-wise?

THE WITNESS: We are still negotiating that figure with Ternstedt, and it has been up around -- I would say seventy thousand dollars at one time, somewhere in that area.

HEARING OFFICER: Thank you very much.

Q. (By Mr. Roumell) Are you familiar with the Michigan Cartagemen's Association? A. Yes, I am.

Q. Are you on any committee of that association of any type? A. I am on the Board of Directors of the Michigan Cartagemen's Association, and I am not certain but I think I am still on the negotiating committee. I was.

* * * * *

255

(Thereupon, a document was marked
Don Cartage Exhibit No. 14 for identification.)

Q. (By Mr. Roumell) Have you seen this document before? A. Yes, I have.

256 Q. What is it? A. It is the certification from the National Labor Relations Board between the Machinery Movers and Erectors Division of Michigan Cartagemen's Association and Riggers Local 575.

MR. ROUMELL: I would like to move for its admission, and would like to move that the Board take judicial notice.

* * * * *

257 HEARING OFFICER: The Hearing Officer will take official notice of the Board's proceedings in 7-RM-159, in which Don Cartage Exhibit Number 14 arose, and it may be admitted for that purpose.

* * * * *

Q. (By Mr. Roumell) You mentioned, Mr. Richards, that you had used millwrights in the past, is that correct? A. I have on occasion, yes.

Q. When was the last occasion? A. I believe in Flint, Michigan in either 1962 or '63, right in that area.

Q. Under what circumstances? A. Same circumstances as any case I could tell you about. A threat of a strike. "Put them on or we will give you a strike." Under force.

* * * * *

297

Wednesday, May 6, 1964

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360

JACK WOOD

a witness called by and on behalf of Don Cartage Company, being first duly sworn, was examined and testified as follows:

* * * *

361

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. You are Mr. Jack Wood, is that correct? A. That's right.

Q. No "s" on the name? A. No "s".

Q. Mr. Wood, do you have a position with the Detroit Building Trades Council? A. Yes, I do.

Q. And what is your position? A. I am secretary of the Detroit Building and Construction Trades Council.

* * * *

362

Q. (By Mr. Roumell) How long have you held that position?

A. Since the 4th of February of 1964.

Q. Prior to that time did you have any connection with the Detroit Building Trades Council? A. I was a delegate to the joint building trades council.

Q. From what union? A. Pardon?

Q. From where? A. From the carpenters.

Q. From the carpenters. A. Carpenters union.

Q. What local was it of the carpenters, or was it the council?

A. I was a delegate from a carpenters local for a time, and later from the carpenters council.

* * * *

364 Q. Now when is the first time, to your recollection, that -- I will strike that. Are you familiar with the Detroit Ternstedt job that Don Cartage had? A. I am quite familiar with it, although I have never actually been on the job myself.

365 Q. But you are familiar with it? A. I think so.

Q. Now when did you first learn about the existence of that job?
A. I first heard about this particular job about, about the 10th or the 11th of February.

HEARING OFFICER: '64?

THE WITNESS: '64.

Q. (By Mr. Roumell) From what source? A. Mr. Weir came to see me and requested a special meeting of the executive board of the building trades because of a problem that one of the locals were having on that job.

Q. What local? A. Local 1102 of the millwrights.

* * * *

374 Q. (By Mr. Roumell) Now, I am correct there was a picket line up at the Ternstedt job March 3, 1964, is that correct? A. I believe that was the date the picket line was placed there.

Q. And are you aware that -- did you have contact on that day with Mr. Kirby? A. Yes.

Q. When and where? A. He called me once, maybe twice, in the forenoon and maybe once in the afternoon. He called me by phone.

375 Q. Who is Mr. Kirby? A. He is the business agent of the building trades council.

Q. He works for you? A. He works under my supervision.

Q. Under your supervision, and do you know whether he was out at that picket line? A. Yes, he was out there.

Q. Did you tell him to go out there? A. Yes, I did.

Q. When did you tell him to go out there? A. The day before.

HEARING OFFICER: That would be the 2nd of March?

THE WITNESS: If the picket line went on the 3rd of March, I told him on the 2nd of March to be out there.

* * * *

Q. [By Mr. Roumell] Well, the council did at one time discuss this situation out there at Ternstedt, is that correct? A. That's correct, the executive board.

Q. The executive board, and it is true that Mr. Weir advised the executive board there would be pickets out there? A. No, he advised
376 the council that in all probability he would have pickets on the job.

Q. At the council meeting of February 18th? A. That's right.

Q. And the executive board where this was discussed was on the 17th? A. That is true.

Q. Did the executive board prior to February 17th discuss the Ternstedt problem? A. No, I don't think so.

Q. Did the executive board sanction the picket line? A. They approved the action and then; -- they approved the action, yes, the Millwrights wanted to take.

Q. When was that done? A. The executive board meeting of March -- pardon me, February 17th, I believe.

Q. And by approval, what did the approval mean? Before you answer that, Mr. Wood, maybe I ought to rephrase the question. In terms of the building trades council procedure what did the approval mean?

A. The approval meant that the council, as such, was in accord with the action contemplated by the Millwrights local.

Q. Did he mean that constituent local union members of the council were to honor the picket line? A. Would be asked to honor the picket line, that's right.

377 Q. Would be asked to honor the picket line. Now why did you ask Mr. Kirby on March 2nd, assuming March 3rd was the date of the picket line to go out to the site of the picket line? A. Because I wanted him out there to answer the questions of any and all parties concerned that were or would ask whether or not it was an approved picket line.

Q. What were his instructions? A. To tell anyone that asked him that the picket line had been approved.

Q. What was the object of the picket line? A. The objection of the picket line was to attempt to get Don Cartage Company to live up to the requirements of the so-called Dunlop agreement.

Q. Well, to put it another way, at the time the picket line went up,

am I to -- who was doing the work for Don Cartage, what union? A. Members of Riggers 575.

Q. And by attempting to get Don Cartage to live up to the so-called Dunlop agreement were you attempting to give some work to Millwrights? A. Well, that's what would have happened if they had lived up to the agreement.

* * * * *

450 Thursday, May 7, 1964

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499

RICHARD M. KIRBY

a witness called by and on behalf of the Employer, Don Cartage, being first duly sworn, was examined and testified, as follows:

* * * * *

DIRECT EXAMINATION

BY MR. ROUMELL:

* * * * *

500 Q. Do you have any connection with the Detroit Building Trades Council? A. Yes, sir.

Q. What is your connection? A. Business agent.

Q. Who is your immediate supervisor? A. Mr. Jack Wood.

Q. Mr. Wood has been identified as Secretary-Manager of the Detroit Building Trades Council? A. Yes, sir.

* * * * *

503 Q. Now, after the 18th -- after that meeting -- what connection, if any, did you have with the Ternstedt job? A. Mr. Wood sent me out there once again to see if the Riggers were doing the work of the Millwrights.

* * * * *

Q. (By Mr. Roumell) So, in other words, am I correct that you went out there at least three times before the picketing started?

A. Yes.

* * * * *

504 Q. Now, when was the next time that you went out? A. The morning that the Millwrights picketed.

Q. How did you happen to go out there? A. I was instructed to go out there.

Q. When? On what date? The day before? A. It must have been.

Q. By whom were you instructed? A. Mr. Jack Wood.

* * * * *

Q. Anything else? A. No. Oh, I beg your pardon. If -- I was instructed in case I was asked if this picket line was sanctioned or approved by the Building Trades Council.

Q. What answer were you to give? A. Yes, it was.

505 Q. Did you go out there? A. Yes, sir.

* * * * *

506 Q. (By Mr. Roumell) What was the purpose of the picket line?

A. Well, a protest that the Riggers were doing the Millwrights' work.

Q. In other words, it was to get the assignment of the work -- to give the assignment of the work to the Millwrights, is that correct?

A. Yes, as I understand it.

* * * * *

588 BLAIR MARTOI

a witness called by and on behalf of Don Cartage Company, being first duly sworn, was examined and testified as follows:

HEARING OFFICER: Would you give the reporter your full name and address please.

THE WITNESS: Blair Martoi, 14010 Stahlen, Detroit.

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Where are you employed? A. Nor-West Machinery Movers.

Q. What is your position with that company? A. President.

Q. And how long have you been affiliated with Nor-West Machinery Movers? A. Fifteen years.

Q. What type of business is Nor-West Machinery Movers in?

A. We are in the rigging business, heavy hauling, moving machinery, plants.

Q. Are you a member of the Michigan Cartagmen's Association?

A. Yes.

* * * * *

623 Friday, May 8, 1964.

* * * * *

626 BLAIR MARTOI

resumed the stand, was examined and testified further, as follows:

* * * * *

646 CROSS EXAMINATION

BY MR. BENNETT:

Q. Mr. Martoi, have you ever worked as a rigger on a job with a rigging crew? A. Yes, I carried a card for a while.

Q. Will you tell us when this was? Approximately? A. '39 to about '43.

* * * * *

657 Q. You have testified that the addition of Millwrights means extra cost. Can you tell us what you mean when you say extra cost, and how you arrive at this conclusion? A. Well, if you were dismantling the presses that we have and put Millwrights on there they couldn't work on the same job at the same time. In other words, the riggers would have to get it ready and then the millwrights would have to go in and bolt it, and while they are bolting it the riggers would be standing around waiting for them, and that would require extra men and extra costs.

* * * * *

679

JOHN METZGER

a witness called by and on behalf of Don Cartage Company, being first duly sworn, was examined and testified, as follows:

HEARING OFFICER: Give the reporter your full name and address, sir.

THE WITNESS: John Metzger, and my address is 20438 Van Antwerp, in Harper Woods.

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Where are you employed? A. General Riggers and Erectors, Incorporated.

Q. Where is that located? A. 1111 Beaufait, Detroit.

Q. What is your position with General Riggers? A. I am president and general manager.

* * * *

681 Q. You do have estimators? A. Yes.

Q. How many estimators do you have? A. In Detroit, five.

Q. In Detroit, five. And what are the backgrounds of the estimators? A. They are people that have worked for us through the years, and are members of 575.

Q. Are they all members of 575? A. All but one, who also has taken a withdrawal card.

Q. In other words, your estimating staff is all members of Local 575? A. Yes, sir.

Q. Now, just what does an estimator do in your business? A. I think in terms -- well, it really explains itself. They go out and look at work and assess the value of the work, prepare quotations, and also do some field supervision.

Q. Now, what portion of your work is attributable to labor costs? A. This is the major part. And percentage-wise, I would estimate about eighty per cent.

682 Q. It is fair to say, then, that an estimator must have a good knowledge of what labor will be involved in each job? A. Yes, sir.

* * * * *

683 Q. Now, before coming to this hearing did you have occasion to make a survey to determine the length of time that these members of Local 575 had been affiliated with your organization? A. Yes, sir. I did.

* * * * *

685 HEARING OFFICER: Very well. Mr. Metzger, could you -- if I direct your attention to Don Cartage Exhibit Number 18 for identification -- could you indicate by pen which employees, if you know, have been employed by General Riggers and Erectors, Incorporated, continuously?

THE WITNESS: Yes, I would like to qualify this because there have been times when we have loaned employees to other contractors.

686 HEARING OFFICER: But to the best of your ability --

THE WITNESS: They are our regular employees, yes.

HEARING OFFICER: Let the record show that at this point this witness has indicated by pen those employees which to the best of his knowledge have been continuously employed by his company for the number of years indicated on Don Cartage Exhibit Number 18.

* * * * *

687 Q. (By Mr. Roumell) Now, Mr. Metzger, I notice that you have over half of your employees, according to the list -- or more -- that have been in your service for over fifteen years? A. Yes.

Q. And you have had a number in your service for twenty years?

A. That's right.

* * * * *

698 Monday, May 18, 1964

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701 DIRECT EXAMINATION (Continued)

* * * * *

706 Q. [By Mr. Roumell] All right, now, we were talking about estimating previously. Could you describe how you, as an estimator, approach

the estimating of a job? A. Yes, sir. Our work is primarily labor, and this is the largest factor we have to figure, and our estimating is going through the motions of estimating, figuring, assessing the amount of labor necessary to do the job, to do a piece of work, primarily, and then there are some other factors, such as equipment and a small amount of materials.

Q. What percentage do you figure the labor takes, in your estimates?

A. I would say about eighty per cent, in that area approximately.

707 Q. Would it be higher than that? A. It is possible. It depends on the individual job. It would be between eighty and ninety per cent.

* * * *

708 Q. Now, when you talk about competition from the plants themselves, what do you mean? A. Talking about the plant maintenance people who also do this kind of work.

Q. You mean people employed by the plant? A. People employed by the customers.

Q. On their permanent payroll? A. Right.

Q. Well, if you are competing with them how can you actually get this work? A. The only way you can do it is to be able to do the work faster and more efficiently and for less money.

Q. Well, what do you mean by doing the work faster? A. By that I mean actually physically doing the work faster, meeting schedules, doing the work more efficiently.

Q. Is that because of skill and training or just what makes your men able to do it more efficiently? A. Well, because we are a specialty contractor. This is what we do entirely. That is the only type of work that we do.

Q. You say you do this with riggers? A. That's right.

Q. And they are members of Local 575? A. Yes, sir.

709 Q. Well, do you use Millwrights in connection with this work at all? A. No, sir, we don't.

* * * *

712 Q. (By Mr. Roumell) What is your best estimate of the amount of work done by specialty contractors in this area? A. I would estimate between ninety and ninety-five per cent.

Q. You say you have actually seen some of the work being done by your competing specialty contractors on jobs that you have been on, is that right? A. Yes.

Q. Have you had a chance to observe the employees that they have used for this work? A. Yes, I have casually.

Q. And what employees were they, if you know? A. Primarily members of Local 575.

HEARING OFFICER: Riggers?

THE WITNESS: Right.

* * * *

751 MR. BENNETT: The scope may or may not have been determined, but I think we have a notice here that deals with this particular dispute and I do not see the relevance of this testimony as to this particular dispute.

HEARING OFFICER: The record I am sure will indicate the notice of hearing in this case and does not define the geographical scope.

MR. BENNETT: I do not claim that it does.

HEARING OFFICER: Very well. I think at this point, I don't think it is prejudicial for this witness to answer.

MR. ROUMELL: I do.

MR. BENNETT: It is highly prejudicial, and I object.

HEARING OFFICER: I think the proper objection might have been there is nothing in the file to show what he regards as the area, outside the area. Are you referring to outside the thirty-four counties?

MR. O'HARE: Mr. Roumell asked what the area was and he said the thirty-four counties in Michigan.

MR. BENNETT: If the hearing officer please, on behalf of my client I will stipulate to the area right now, for the record.

MR. ROUMELL: I will too.

HEARING OFFICER: Off the record for a moment.

MR. BENNETT: I would like it on the record.

HEARING OFFICER: No, off the record for a moment.

752 (Discussion off the record.)

HEARING OFFICER: Back on the record. Let the record show that during an off the record discussion, the hearing officer and counsel for the respective parties have discussed the possible stipulation or agreement with respect to their contention as to the geographical area of the dispute before us. At this time on behalf of the charging party, Don Cartage, and the Michigan Cartagmen's Association will you stipulate your contention on the record, Mr. Roumell?

MR. ROUMELL: Don Cartage and Michigan Cartagmen's Association contends that the area of the dispute is the thirty-four counties located in the State of Michigan which are listed on page 3 of exhibit 13 which is Don Cartage exhibit 13, of our collective bargaining contract. We will even go as far as to say this. We understand one party has three additional counties involved.

HEARING OFFICER: Which party is that?

MR. ROUMELL: That would be the riggers and we would agree to stipulate the area covers those additional three counties. These are all counties in Michigan.

HEARING OFFICER: Very well, will you state your contention or understanding of the jurisdictional area of dispute, Mr. O'Hare?

MR. O'HARE: Our contention is, as I said in my opening statement, that the dispute results from what is our claim, Millwrights' Local 1102's

753 claim that under the Dunlop award and the Dunlop award has appended to it, which is Millwrights' exhibit 1, a letter dated August 2, 1956, signed by Mr. L. M. Weir, secretary of the Carpenters District Council, in which there are listed nineteen counties and parts of two others which constitute the scope of the Millwrights' jurisdiction at the time of the Dunlop award, and this award has not been, so far as we are concerned, amended and those nineteen plus two partials represent for

us the area in which we are making our claim and, therefore, in which, as far as we are concerned, the dispute exists.

HEARING OFFICER: Is that your contention with respect to the district council of carpenters that you also appear for them, Mr. O'Hare?

MR. O'HARE: Oh, yes, I should say on the record the Carpenters District Council as an entity itself represents only six -- I am sorry -- has constituent units in only six and part of a seventh county of that group. The Carpenters District Council is in support of the Millwrights' claim here and their claim also under the Dunlop award and therefore it extends to the whole nineteen counties insofar as they think the area in which the dispute, we believe exists, the whole nineteen plus two parts.

HEARING OFFICER: Mr. Prebenda, on behalf of the Building Construction Trades in the counties of Wayne, Oakland and Macomb counties,
754 what is your statement as to the scope of the jurisdiction of the disputed territory?

MR. PREBENDA: Mr. Hearing Officer, the title of our organization indicates there are three counties involved as far as we are concerned. Namely, Wayne, Oakland and Macomb counties. We have no quarrel with what the other parties say. Our only concern is this dispute did occur within one of the three counties in which our territorial limitations exist and we have no concern otherwise.

HEARING OFFICER: Very well, Mr. Bennett, on behalf of Riggers Local 575 what is their position with respect to the scope geographically of the dispute before us?

MR. BENNETT: Our position is the jurisdictional area encompassed by the Riggers and Machinery Erectors local 575 consists of thirty-seven counties in the State of Michigan. We are for the purpose of this hearing stating this is the scope for which we desire to be considered and we are in no way relating it to the Dunlop award or any correspondence which may be related to the Dunlop award inasmuch as we do not consider it at this point, that the Dunlop award is in any way determinative of the jurisdictional area or scope for the purpose of this

dispute or in anywise determinative of the dispute. I think for the sake of the parties I had better read these counties into the record inasmuch as they do not appear in any document which is before us.

755 HEARING OFFICER: I think they do. Isn't that in the contract?

MR. BENNETT: I have looked through it and I don't see the list set forth.

HEARING OFFICER: Here it is under territorial jurisdiction Section II, page 6.

MR. BENNETT: What page are you on?

HEARING OFFICER: Pages 6 and 7, "the following thirty-four."

MR. BENNETT: You have thirty-four counties and we are contending for thirty-seven.

HEARING OFFICER: Where do the other three come in?

MR. BENNETT: As I understand the jurisdiction of riggers local 575 it encompasses thirty-seven counties.

HEARING OFFICER: The other three can be added.

MR. BENNETT: Rather than belaboring the record, I will reserve the right to compare the list which appears in the agreement referred to on the basis of my thirty-seven counties, and after the recess I will read those three additional counties into the record.

HEARING OFFICER: Very well, the position of the parties with respect to the area of dispute is now clarified for the record. Will you resume your cross examination, Mr. O'Hare?

MR. PREBENDA: I might add, Mr. Hearing Officer, if the Board should not uphold the position of the Trades Council in this, I would by 756 no means by my previous statement intend to limit the area which I think the Board should cover. In other words, if they should not sustain our position, I would ask the entire matter be covered. I don't want that to be an elimination.

* * * *

CROSS EXAMINATION

BY MR. O'HARE:

* * * *

863 Q. I didn't ask you what the use was -- what tools? A. Well, we have special appliances for lift trucks and caterpillar tractors. We have all kinds of tools that are developed in this area and usually only used in this area. A lot of our equipment we build ourselves. You just can't buy it on the market. They are tools we develop ourselves, each contractor.

* * * *

873

Tuesday, May 19, 1964

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877

DONALD JARDENE

a witness called by and on behalf of Don Cartage Company, being first duly sworn, was examined and testified as follows:

* * * *

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Where are you employed? A. International Industrial Contracting Corporation.

Q. What is your position with that company? A. I am president.

878 Q. How long have you been president of that company? A. Since May, 1961.

Q. How long has your company been in existence? A. Since May of 1961.

Q. What business is International in? A. We are in the machinery moving, rigging and erection, assembling.

Q. Now exactly what does machine moving and erecting mean?

A. Well, it means that you disassemble, reassemble, move, place machinery, set, align and level it, take it from one spot and put it into another spot.

Q. That is the general nature of your business? A. That is correct.

* * * *

886 Q (By Mr. Roumell) In other words, a very high percentage of your bid is based on your labor cost? A. Ninety-nine percent of all of our jobs are based on labor cost.

Q. And what type of employees constitute that labor that you are speaking of? A. Riggers, members of local 575.

Q. These are the people you employ? A. These are the people I employ in my work.

Q. Are these the people you have always employed in your company since its organization? A. That is correct.

* * * *

895 Q. (By Mr. Roumell) After your long years of experience both your own company and with Don Cartage, have you formed any opinion or estimate as to the amount of machine moving and erecting work that is done by members of the Cartagemen's Association in this area?

* * * *

896 THE WITNESS: I estimate the group of cartagemen will do ninety-seven, maybe ninety-eight percent of the work in this area.

HEARING OFFICER: Machinery moving and erecting?

THE WITNESS: Yes.

HEARING OFFICER: Rigging business?

THE WITNESS: Assembly, disassembly, all of this type of work.

* * * *

897 Q. (By Mr. Roumell) The members of the Cartagemen's Association you estimate do ninety-four percent, and non-members maybe do another three percent and others -- A. This is my idea.

* * * *

CROSS EXAMINATION

BY MR. O'HARE:

* * * *

911 MR. ROUMELL: The stipulation I propose is that the following companies all have contracts with riggers local 575 from May 1, 1962 to April 30, 1965, which are identical to the Don Cartage Company

contract which is Don Cartage exhibit 13, and the General Riggers contract which is Don Cartage exhibit 19, and also identical to the contract of International Industrial Contracting Corporation which we stipulated already, the exception being the signatures.

912 HEARING OFFICER: All of them have been signed individually?

MR. ROUMELL: All have been signed individually.

HEARING OFFICER: By the individual employers?

MR. ROUMELL: By individual employers. Nor-West Machinery Company, Inc., International Industrial -- we have already stipulated. Barney's Cartage Company, Detroit Riggers and Erectors, Gale Industrial Rigging and Erecting Contractors, Inc., Turner Cartage and Storage Company, Lehay, Inc., Thomas Goodfellow, Inc., and as I say we already have three in the record -- Don Cartage, Detroit Riggers and International.

HEARING OFFICER: Very well, may it be so stipulated, Mr. O'Hare?

MR. O'HARE: Yes, it may.

HEARING OFFICER: Mr. Prebenda?

MR. PREBENDA: Yes.

HEARING OFFICER: Mr. Bennett?

MR. BENNETT: Did I hear Barney Cartage?

MR. ROUMELL: Yes.

HEARING OFFICER: May it be so stipulated, Mr. Bennett?

MR. BENNETT: Yes.

MR. ROUMELL: And also could the stipulation include the association signed such a contract?

MR. O'HARE: Yes.

913 HEARING OFFICER: May it be so stipulated, gentlemen?

MR. PREBENDA: Yes.

MR. BENNETT: Yes.

HEARING OFFICER: The stipulation is received. Proceed with your cross examination, Mr. O'Hare.

Q. (By Mr. O'Hare) You participated, Mr. Jardine, as a member of the committee of the association in negotiation of the contracts to which Mr. Roumell has just referred, the contract with local 575 from May 1, 1962 to April 30, 1965? A. Yes.

Q. Do you remember who the other members of the association were? A. Al Reading, Walter Girardy, and as an alternate Royce Richards.

Q. I believe your previous testimony was that Mr. Quig also sat in? A. That is correct.

* * * *

923

CROSS EXAMINATION

BY MR. BENNETT:

* * * *

924 Q. I think in answer to Mr. Roumell's questions you said the people that you hired, riggers were hired because of their knowledge and skills and training? A. That is correct.

Q. In your type of work? A. That is correct.

Q. I believe you said one of the things that was involved in training was apprenticeship training program? A. We have an apprenticeship training -- we have an apprenticeship training program.

Q. Do you have any connection with the apprenticeship training program? A. Yes, I have a connection with it.

Q. What is that connection? A. I pay into it.

925 Q. By virtue of the contract? A. That's right.

Q. Have you ever had any part in setting up or determining the course of study of the apprenticeship training program? A. When the program first started I believe that I was on the committee for this but you must understand that all contractors do participate in the fund and do participate in the training of these men because we spend two years training them besides what schooling and other information they get from the teachers at the riggers local, and from the help they get down there. We also spend our time training them.

Q. There is an on the job part of this apprenticeship program in addition to the school part? A. That is correct.

Q. And the on the job part is performed by having those apprentices work on the jobs of the members of the association? A. Yes, they work.

Q. You have apprentices on your payroll? A. I do.

Q. The number of apprentices might vary from time to time, right? A. It would but usually it stays around the same. It would vary.

* * * * *

972 MR. BENNETT: I object to the question again, as far as this hearing is concerned. I do not see the relevancy to demands by millwrights on other companies in other disputes at other times. Therefore, I would object to the relevancy.

HEARING OFFICER: Except the parties unanimously agreed, the concensus of counsel, as to the parties in this dispute, they would like determined a scope broader than just what was transacted here at Ternstedt's a couple of weeks ago. I thought it was the contention of all of the parties, in fact I solicited and invited their contention in that respect on the record, and if I recall it was unanimously indicated. Now the witness testified to this effect that -- in answer to Mr. Roumell's questions that the dispute or about a dispute in Flint, Michigan. I recall -- I don't remember his exact words -- they were harrassing him about some work, work assignments.

MR. ROUMELL: I didn't ask it.

HEARING OFFICER. It was his testimony, forgive me. The millwrights were not qualified, he said.

MR. BENNETT: Withdraw the objection.

HEARING OFFICER: Maybe they weren't qualified.

* * * * *

1030

457 Federal Building
Detroit, Michigan 48226
Wednesday, May 20, 1964

1033

JOHN BLUE

a witness called by and on behalf of the Don Cartage Company, having been previously duly sworn, resumed the stand, was examined and testified further as follows:

HEARING OFFICER: Let the record indicate Mr. Blue has previously been sworn in this proceeding.

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Your name is John Blue and you have previously been on this stand, is that correct? A. Yes.

Q. So we have proper identification. I think you previously testified you were vice president and superintendent of the Don Cartage 1034 Company? A. Yes.

HEARING OFFICER: Vice president and general manager, I think he said.

MR. ROUMELL: No, the general manager is Royce Richards.

HEARING OFFICER: Very well. Thank you.

Q. (By Mr. Roumell) I think you testified that you have been associated with Don Cartage Company for a period of twenty years or more? A. Yes, sir.

Q. Now what is the business of Don Cartage Company? A. Don Cartage's business is machinery moving, erecting, moving and installation of heavy machinery, and light machinery -- all types of machinery, the movement from plant to plant, installing of new equipment, the complete installation of moving, assembling, erecting, lining, leveling, anchoring and so on.

Q. All types of machines? A. All types of machines.

1035

Q. (By Mr. Roumell) Now, I believe you testified that one of your major duties is making estimates and bids, is that correct? A. Yes, sir.

Q. Now in regard to bidding and making an estimate, could you

explain how you bid a job? A. Well, the first operation you have to study the specifications, and your prints that are supplied by your customer. You want to study them thoroughly and then you make a check, a field check of all the equipment as to access, what kind of problems are involved in the moving of the machinery so far as head rooms, and exits and get-out. You make a study of the new building the same way to see what the accesses are and the conditions are on the job, and when you are thoroughly acquainted with that portion of the job, you more or less set down then and try to analyze the thing as to your men hours that it takes to do each operation, each machine, and get it all together, and try to work it at every angle. It is highly competitive and you try to figure the most economical and efficient way of doing the job to come up with your estimate.

Q. Now when you speak of man hours, what proportion of the actual bid does that constitute? A. The man hours actually in our -- we figure about eighty percent. It depends a lot on how bad we want the job. A 1036 lot of times, we don't figure too much for our equipment although we have a lot of equipment, a lot of expensive equipment involved. If we want the job quite badly we don't allow too much for equipment on the job.

Q. Are you suggesting that in some cases the man hour portion of the bid may be in excess of eighty percent? A. Yes, yes, sir.

* * * *

1038 Q. I notice on those you also have your own name? A. Yes, sir.

Q. You are a rigger? A. Yes, sir.

* * * *

1040 Q. (By Mr. Roumell)

* * * *

1043 Q. Would that have any effect on the time that you do the job?

A. It would have effect on time because with our operation in using the riggers two men will be laying out, two will be moving the machine in. It is a continuous process like a production line basis. There is no

lost time when they move from one job right on into the other. There is no waiting for someone else to do this or do that. We move from one operation to the other.

* * * *

1045 Q. (By Mr. Roumell) You were talking about efficiency. Does this have any effect on your operation from the economical point of view?

A. Yes, the more efficient the more economical.

Q. Don Cartage has a contract with local 575 covering the thirty-four counties involved in Michigan? A. Yes.

Q. You have no contract with the millwrights? A. No, sir.

Q. And it is the normal practice not to hire millwrights, is that correct? A. Yes.

Q. Now from a competitive standpoint in getting work, who or what area do you consider your competition? A. Well, it is a highly competitive field, everything is I guess. Our first competitor in this work is the plant maintenance crews, the crews that industrial plants carry as maintenance men. When they are trying to line up a project that they are planning on, if it is a relocation or move they first get cost estimate from their maintenance superintendent, their plant engineer, whatever you want to call it, and if they put it out for bids, and the bids all exceed what they have estimated that their plant maintenance can do it for, I am out of the picture as well as all of my competitors, and they are real competitive. Plant maintenance is real competitive. It is more important than a lot of us think, because it has been getting more competitive as the years go by.

1046 Q. When you say it is getting more competitive from the plant maintenance, what do you mean? A. Well, they have their unions there and they don't want our men working weekends and like that, when their men are not working, when their union members are not working.

Q. Let me ask you this.

MR. O'HARE: Let him finish his answer.

MR. ROUMELL: I thought he had.

HEARING OFFICER: Had you finished, Mr. Blue, or do you have something to add to that?

THE WITNESS: Well, as I said, they don't want -- they have their union problems within their own plant, and they can figure, they can figure their cost down real low on this because there is a certain amount of overhead involved with them that they have got to bear regardless of whether these men are doing a job or not, and then they don't have the high insurance to absorb that we do in insuring these jobs, and they are real competitive and it is a serious phase of not only this industry but other contracting industries in this area, not only this area but throughout the country.

1047 Q. (By Mr. Roumell) Now does that really mean you find it very difficult to compete with plant maintenance? A. Yes, sir.

HEARING OFFICER: Just a minute. I don't think it is fair to characterize the testimony of the witness by a restatement of what he meant, Mr. Roumell. I think the witness' answer was thorough and it was comprehensive, and it will speak for itself without your interpretation of it.

MR. ROUMELL: I was just summarizing it.

HEARING OFFICER: Next question.

Q. (By Mr. Roumell) Based on what you have just said, how are you able to compete against plant maintenance to get this work? A. Well, we have a more efficient operation than they have, and many times that sells the job because of the time element involved and the more efficient operation, more skilled men to do the job than the plant maintenance have.

Q. Is the time element important in your work? A. Yes, sir, very much so.

Q. In what connection? A. The production, the production is a prime factor in any of these plants, and if you don't get the job done and hold up production, it costs them plenty of money and you won't be called back.

1049 Q. (By Mr. Roumell) I show you this document and could you identify what this document is? A. Yes, sir.

Q. What is that document? A. This is my estimate of the added cost to the Ternstedt job if I had used millwrights.

HEARING OFFICER: For aligning, leveling and anchoring?

THE WITNESS: Yes, yes.

Q. (By Mr. Roumell) Are we to consider -- strike that. Are we to assume that you considered the specifications in making that estimate? A. Yes.

* * * *

1058 Q. (By Mr. Roumell) Now based on your estimates of the millwrights that you would use, did you come to a conclusion on the Ternstedt job if there would be any additional cost? Answer either yes or no. A. Yes.

Q. And would there be an additional cost by the use of millwrights?

A. Yes, sir.

1059 Q. And what would that estimated cost, additional cost be? A. The estimated additional cost?

Q. Yes. A. It would have been around the forty-six thousand mark.

Q. The forty-six thousand dollars? A. Yes.

MR. PREBENDA: Are we speaking just about millwrights?

MR. ROUMELL: We are talking about millwrights?

Q. (By Mr. Roumell) Is that your figure? Millwrights? A. Can I look at this? I have it here.

Q. Yes.

HEARING OFFICER: You can look at it.

THE WITNESS: I was off two thousand -- \$44,557.94.

Q. (By Mr. Roumell) Additional cost for millwrights? A. Yes.

HEARING OFFICER: You estimate it would cost you that much additional?

THE WITNESS: Yes, I estimated my original cost as to what the whole job would cost me with riggers.

Q. (By Mr. Roumell) Is that based on the same man hour program that you originally bid? A. Yes, sir.

Q. Now I think you testified previously that roughly speaking the Ternstedt job had a value of in excess of four hundred thousand dollars, is that correct? A. Yes, sir.

1060 Q. Now how much of that four hundred thousand dollars, as you originally estimated, includes cost for riggers? A. My riggers, the rigging cost was in the neighborhood of one hundred twenty thousand.

Q. What constituted the remainder of your bid? A. My subcontractors -- for electrical contractors and mechanical contractors.

Q. The forty-four thousand five hundred some odd dollars you have estimated for millwrights would be added to the one hundred twenty, is that what you are saying? A. That would have had to have been added for the original estimate. This would have been subtracted from the one hundred twenty if I had went ahead and used millwrights.

Q. In other words, is your cost one-third more with the millwrights? A. Yes.

Q. One third more than what you had originally estimated at one hundred twenty? A. Yes.

Q. So your entire estimate, including everything would be up forty-four thousand? A. That is correct, yes.

* * * *

1061 Q. Now by adding these millwrights would you have eliminated any riggers on the job? A. No, sir.

Q. Why is that? A. Because you would have had the riggers standing by there to remove the machines for anchoring and replace them for anchoring? Q. You would still have had to keep your same crew of riggers. A. Yes.

Q. With the riggers your estimate was one hundred twenty thousand dollars for the machine moving? A. Yes.

Q. And you say if you are going to put millwrights on you must add forty-four thousand to this cost? A. Yes.

Q. And it is a question of adding? A. Yes.

* * * * *

1063 Q. (By Mr. Roumell) Now based upon your beating the bushes and having knowledge in the thirty-four county area of the business to be gotten and so forth, do you have an estimate of how much of the machine moving and erecting business in that area, the thirty-four counties of Michigan are thereabouts is done by members of the Michigan Cartagemen's Association? A. Yes, sir, I would say it would be approximately ninety percent of it done by members of the Cartagemen's Association.

Q. Now Don Cartage, am I correct that Don Cartage considers itself a specialty contractor or a specialty moving contractor? A. Yes, sir.

Q. Would that be the way you would characterize the other members of the Cartagmen's Association? A. Well, moving and rigging.

Q. A specialty? A. A specialty, a specialized field, yes.

* * * * *

1066 Q. What effect would that have, if any, on your operation? A. Well, it is added cost. You are paying the men to stand by. They are not working. With the riggers it would be a continuous operation. You move this machine to the location. The millwrights are standing by again. The riggers remove it from the skids and they are standing by while they are drilling their holes and getting the holes marked out and drill the holes. They have to stand by, the riggers, so they can remove the machine from the foundation while they drill the holes.

* * * * *
1159 * * * * Friday, May 22, 1964
1162

CHARLES H. QUIG

a witness called by and on behalf of Don Cartage Company, being first duly sworn, was examined and testified as follows:

* * * * *

DIRECT EXAMINATION

BY MR. ROUMELL:

Q. Mr. Quig, where are you employed? A. I am employed by the Michigan Cartagemen's Association.

Q. In what capacity? A. My title is manager.

Q. How long have you been so employed by the Michigan Cartagemen's Association? A. Approximately three years.

1163 Q. And that's the only position you have held with them, is that correct? A. Yes.

Q. Now what does the Michigan Cartagemen's Association consist of? A. Well, primarily, it is a group of cartage operators with a branch or division of cartage operators. They have the division of heavy haulers, they have a division of steel haulers, various types of warehousing, and varying types of operation.

Q. Am I correct then, in this hearing we have been talking about the heavy haulers division? A. That's right.

Q. And that is only one segment of the cartagemen's association, is that correct? A. That is correct.

Q. Now are the records kept under your control? A. Yes.

Q. Now in regard to the heavy haulers division, have you had occasion to list the memberships and the date they came into membership to the best of your knowledge? A. Yes.

1164 Q. And how did you ascertain that? A. Well, since I have become manager I have personally signed or accepted applications from certain members and there is a certain segment of the group that were members quite some time before my time.

Q. How far back do your records go? A. Well, when this case started I looked into the records and I can find our records back to approximately 1954.

Q. You do not have records prior to that time? A. Unfortunately not.

Q. All right, could you list the members of the association and the dates they became members?

HEARING OFFICER: Mr. Roumell, let me make a suggestion. If you have a list of them and the dates why don't you submit it to counsel? Maybe we could save a lot of time.

THE WITNESS: There are only ten.

MR. ROUMELL: Would you mark this?

MR. O'HARE: I can't stipulate.

Q. (By Mr. Roumell) Will you give us the list as they come from your records? A. I have them listed this way, and I have with me a file that reads thus: "Michigan Cartagemen's Association, Detroit, Division, old accounts."

HEARING OFFICER: Just a minute before we read anything as record testimony. I don't think the witness should be allowed to read things without showing to counsel what he is reading.

Q. (By Mr. Roumell) Why don't you just state the names and
1165 the dates. A. I will try to give you the basis of where I got this.

Q. All right. A. Barney's Cartage, prior to July 1954. Detroit Riggers and Erectors, October, 1962. Don Cartage Company, prior to July, 1954. General Riggers and Erectors, prior to July, 1954. Thomas Goodfellow, Inc., prior to July, 1954. Gale Industrial Riggers and Erectors, September, 1963. International Industrial Contractors, September, 1961. Lahey, Inc., November, 1962. Nor'west Machinery Movers, prior to July, 1954. Turner Cartage, prior to July, 1954.

Q. And you obtained these from your financial dues records?
A. That is right.

Q. You do not have dues records going beyond that date, beyond July, 1954. A. That's right.

HEARING OFFICER: Let me ask you a question with respect to that answer. The fact the records don't go back, does that mean they were not members of the heavy hauling division before that date? I am referring to the three names you specified that were dated subsequent to May 1, 1962. Does that mean they were not members of the heavy haulers division of the Michigan Cartagemen's Association?

MR. ROUMELL: Are you speaking about Gale and --

HEARING OFFICER: Gale Industrial Rigging, Lahey, Inc., and
1166 Barney's Cartage.

MR. ROUMELL: You misspoke.

THE WITNESS: There are three companies, Lahey, Inc., is a brand new company, and Gale Industrial was a new company in 1961.

HEARING OFFICER: I am asking about a specific date for a reason, Witness. You mentioned three that your records indicate were members subsequent to May 1, 1962, am I correct?

THE WITNESS: I don't recall saying May, 1962 at all.

HEARING OFFICER: I am asking you, the dates you gave, were there three of them dated subsequent to May 1, 1962?

THE WITNESS: There is one, two, three, four, five, six were -- seven -- eight of them -- seven of them subsequent to 1962.

HEARING OFFICER: No, eight of them were prior to 1962, not subsequent, Witness. Now you have that in front of you. Why don't you check it and answer my question.

THE WITNESS: You want to know who has been signed after May of 1962. Is that your question?

HEARING OFFICER: Yes.

THE WITNESS: Detroit Riggers and Erectors, October, 1962. Gale Industrial, September, 1963. Lahey, 1962.

HEARING OFFICER: There were three of them subsequent. Now
1167 answer my question with respect to those three parties, Witness. Does that mean they did not belong to the association prior to those dates?

THE WITNESS: That is right, that is right.

HEARING OFFICER: Very well, then.

MR. ROUMELL: Mr. Fischer, I would also like the record to show that we previously stipulated they have the same contract and I brought them here and they disclose the signatures about the time and date I am talking about.

* * * *

MR. ROUMELL: May I have these marked please.

(Thereupon, documents were marked
Don Cartage Exhibits 22 to 31, for
identification.)

Q. (By Mr. Roumell) I show you Don Cartage proposed exhibits 22 through 31. Can you identify them? A. These are ditto copies of Michigan Cartagemen's Association power of attorney.

Q. They are from the files and records of the association, is that correct? A. Correct.

* * * *

1168 Q. (By Mr. Roumell) Am I correct, Mr. Quig, that on the exhibits I have just handed you there are some powers that are dated prior to 1962, and some are early '62 and some are later in '62 and later dates, is that correct? A. That's right.

Q. Could you explain the significance of those dates, if you know?

1169 A. Well, since I have become manager, I have signed up the latest members. At the time I signed them up, I had them sign their powers of attorney. Those dates are the approximate date they joined the association. Prior to negotiations in 1962 I went through the files of all of the members of the heavy hauling division, and I found some of the powers of attorney were not in their files, and I asked all of them about it. They said well they had signed but in the numerous cases we have had on this particular jurisdictional dispute, I imagine the powers of attorney --

MR. O'HARE: Objection to what the witness imagines.

HEARING OFFICER: I will strike that from the record.

THE WITNESS: I believe, to the best of my knowledge, the powers of attorney had been pulled from the files and were in the hands of the lawyer somewhere and were not in the files.

Q. (By Mr. Roumell) Well, did the members at the time tell you they had previously signed powers of attorney? A. That's right. I checked with all of them and they said they had signed power of attorney.

Q. Those are the seven outside of Detroit Riggers, Gale and Lahey that we are talking about? A. That's right.

Q. I take it they told you that prior to 1962 they had signed power
1170 of attorney previously? A. That is correct.

Q. And the purpose of these powers were to re-execute powers of attorney? A. To get copies back into their files, that is right.

Q. I note that Nor'west and Turner Cartage have a February, 1962, date on their power of attorney, is that correct? A. Turner, February of 1962, and Nor' west 1962, yes.

Q. Did they have powers before that time? A. Turner was a member, Dan Turner when he was with Turner Cartage Company was a member of the association, and then he left Turner Cartage Company and opened another business, and when he came back he rejoined, and it could have been that was the date he rejoined the association.

Q. What about Nor'west? A. Nor'west was a member prior to 1954. He was out of the association for awhile and then he rejoined at that time.

MR. ROUMELL: I would like to have this marked Don Cartage exhibit 32.

HEARING OFFICER: Are you about to offer that in evidence.

MR. ROUMELL: I am sorry. I move for the admission of Don Cartage exhibits 22 through 31.

* * * * *

1171 HEARING OFFICER: Don Cartage exhibits 22 through 31 may be received in evidence.

* * * * *

Q. (By Mr. Roumell) Have you seen Don Cartage proposed exhibit 32 previously? A. Yes.

Q. What is that exhibit? A. By-laws of the Michigan Cartagemen's Association.

Q. Does that include all divisions? A. Yes.

Q. As well as the heavy hauling division? A. Yes.

* * * * *

1172 Q. (By Mr. Roumell) In 1962 negotiations for the current contract with the riggers, was that handled by a committee? A. Yes, sir.

Q. A committee of members of your division, is that correct?
 A. Of the heavy haulers division.

Q. Of the heavy haulers division? A. Yes.

* * * *

1187

ROY E. TURNER

a witness called by and on behalf of the respondent Millwrights, being first duly sworn, was examined and testified as follows:

HEARING OFFICER: Will you give the reporter your full name and address please?

THE WITNESS: Roy E. Turner, 3200 Calvert, Detroit 6, Michigan.

DIRECT EXAMINATION

BY MR. O'HARE:

Q. Mr. Turner, what is your occupation? A. Millwright.

Q. Are you a member of any labor organization? A. Member of millwrights local 1102.

* * * *

1240

Q. (By Mr. O'Hare) Mr. Turner, did you work on any other components in this reactor?

MR. ROUMELL: I raise an objection as to the testimony about this job, it not being in the thirty-four county area.

1241

HEARING OFFICER: Monroe, Michigan is not?

MR. O'HARE: It is in the nineteen county area.

HEARING OFFICER: Very well, will you answer the question, or would you ask it again, Mr. O'Hare?

1852

1940

* * * * Wednesday, June 17, 1964

* * * * **GEORGE HORN**

a witness called by and on behalf of the Respondent, Millwrights, being first duly sworn, was examined and testified, as follows:

* * * *

DIRECT EXAMINATION

BY MR. O'HARE:

Q. Mr. Horn, what is your occupation? A. Business representative, financial secretary, Millwrights' Local 1102.

Q. How long have you had that position? A. It will be three years in July. That is the recent period.

* * * * *

2033

Thursday, June 18, 1964

* * * * *

2053

HEARING OFFICER: I don't think he answered it because, frankly, Mr. O'Hare, what we are concerned with is the historical development and evolution of the disputed worked. We have one dispute before us in this case that is before us and I don't think the history of the dispute is important, although I did feel, and I think I showed every consideration that the history and development of the disputed work is relevant but the fact there have been maybe ten thousand incidents in dispute I don't think is relevant, of course, at this time.

MR. O'HARE: As I understand that ruling, Mr. Hearing Officer, it strikes at the very heart of our case. Are you telling me now the dispute between riggers local 575 and millwrights local 1102 except as it pertains to Ternstedt is not relevant to these proceedings?

2054

HEARING OFFICER: No I didn't say that, Mr. O'Hare. I said the history of the disputed work on which we have taken testimony now for almost five weeks is relevant but the history of the dispute and all of the incidents of the dispute going back, if twenty years or thirty years, I don't think is relevant. The history of the dispute: The history of the disputed work is, yes, but how many incidents there might have been in the dispute I don't think is relevant. Now I did, in agreement with all of the parties, agree the dispute is wider and broader than the particular incident at Ternstedt's and I think all of the parties agree to that but I don't think the history of each incident of the dispute is relevant.

MR. O'HARE: Mr. Hearing Officer, I don't intend to go into each incident of the dispute but I do intend to show, and that's why I asked you

about your ruling -- I do intend to show various aspects of this dispute as they involve -- as they evolve in our position into the present jurisdictional rights, as we see them, of the two parties here, and I think this is specifically relevant when it involves a member of the association, although I don't think that is necessary for its relevance.

HEARING OFFICER: I don't think it is necessary either. I am inclined to agree with you. I think the parties can agree there has been a dispute over disputed work between millwrights 1102 and local 575 of the riggers for a period of fifteen or twenty years. I think it is in the area of relevant testimony if we can agree on it, which I think we can but to take testimony when an incident might have happened twenty years ago, I don't think is relevant. May we go off the record a moment, please.

(Discussion off the record.)

HEARING OFFICER: Back on the record. Very well, let's proceed. I am going to ask you again, Mr. Horn, to be responsive to Mr. O'Hare's question which I understood to be when did you first hear or how did you first learn of the dispute between the organizations involved over this work?

* * * * *

2162 Monday, July 6, 1964

* * ■ *

CROSS EXAMINATION

2315 Q. (By Mr. Roumell) Now when you talked to Mr. Metzger about six or eight months ago, I take it you made reference to the Dunlop agreement? A. Yes, I did.

Q. What did you tell him about the Dunlop agreement? A. I told him -- I questioned him as to why we couldn't get millwrights employed by General Riggers in accordance with the Dunlop provisions that we had, that we all had worked under the provisions and couldn't understand why our people weren't employed on the jobs that they were getting, that was in the category covered by the Dunlop agreement.

Q. Now when you talked to John Blue at Don Cartage regards the Ternstedt job I take it that you again mentioned the Dunlop agreement to Mr. Blue? A. I did. I asked him if he understood its provisions

2316 and he said he was aware of some of them.

Q. What position did you take with regard to the Dunlop agreement as regards Don Cartage at that time? A. I don't understand the question.

Q. All right, I will rephrase it. You told him about the Dunlop agreement when you were talking on the Ternstedt job, is that correct?

A. I asked him if he was familiar with the provisions, that's right.

Q. How about when you were talking with Blue at that small plant on Hoover, did you mention the Dunlop agreement there? A. Yes, I did.

Q. You say you talked to Blue about the DeLuxe Die job? A. That's right.

Q. Did you mention the Dunlop agreement there? A. Yes, sir.

Q. Am I correct you talked to Royce Richards about the Dunlop agreement in regard to DeLuxe? A. To the best of my recollection, I did.

Q. Now when you talked to Dan Turner, did you mention the Dunlop agreement to Turner? A. Yes, I did.

Q. What did you tell Turner about the Dunlop agreement? A. About the same thing I told the others. We had certain work under its provisions and I would like to get our people on it.

Q. When you talked to Gale did you mention Dunlop to Gale? A. That's right.

Q. What did you tell Gale? A. That under the Dunlop agreement we had certain work that I thought we should get.

Q. Now to the best of your knowledge, since 1957 have millwrights had a contract with General Riggers? A. That I couldn't tell you since 1957 because I have been in the field until '61 and since then we have not had an agreement.

Q. Since the time you have been business manager you definitely have not had an agreement with General Riggers? A. No, no signed agreement.

Q. Now you correct me if I am wrong here, but I think you mentioned within the last year you haven't had an agreement with Don Cartage, is

that what you said now? A. No, I don't have an agreement with them.

Q. How about since the time you have been business manager? A. Since 1961, to my knowledge, we have not had one.

Q. And since you have been business manager in 1961 have you had any agreement with Dan Turner, or Turner Cartage, I am sorry? A. No, I have not.

* * * *

2355

Tuesday, July 7, 1964

2395 Q. (By Mr. Bennett) Throughout your relation of conversations with some of the members of the Cartage Association, heavy haulers division, Mr. Turner, Mr. Lahey, Mr. Blue -- I don't know who else -- on an occasion here you have used the phrase you wanted your crust of bread? A. Most generally.

Q. You felt you were entitled to something, is that true? A. That's true.

Q. Under Dunlop? A. Under the Dunlop decision.

Q. And it is your opinion Dunlop gives something to everybody? To both the riggers and the millwrights? A. I didn't say it that way.

Q. Tell us what you mean? A. The Dunlop decision, I said, to my knowledge wasn't satisfactory to us or to the riggers.

* * * *

2440

Q. (By Mr. Prebenda) Mr. Horn, referring you to the picket line out at Ternstedt on March 3, 1964, who manned that picket line? A. Who manned the picket line? Millwrights local.

* * * *

2473

Q. (By Mr. Bennett) Did you mention the picket line to Mr. Kirby? A. I didn't have to mention it. He saw it.

Q. Did you mention the picket line to Mr. Kirby, yes or no? A. I didn't mention the picket line to Mr. Kirby. He knew one was there.

Q. Did Mr. Kirby mention the picket line to you? A. Not that I

recollect.

Q. You both just stood there and neither one said anything about the picket line? What is your answer? A. This is your statement. I told you what I said to Mr. Kirby and what he said to me.

Q. Mr. Horn, my question is you both just stood there and neither one said anything about the picket line? You just stood and watched it. A. We didn't stand there and watch it. I was walking the picket line.

Q. You were walking the picket line? A. Oh, definitely.

Q. Well, I didn't understand that. I am sorry Mr. Horn. Were you carrying a sign? A. Yes, I was part of the time.

* * * *

2476 Q. (By Mr. Bennett) How long did you walk that picket line? A. Over the two days I would say roughly eight hours, on and off.

Q. How many men were in the picket line when you were walking? A. At times there were just two and other times five or six.

* * * *

2482 HEARING OFFICER: Will you tell us whether you did receive the support of the building and construction trades in your picketing activity at Ternstedt?

THE WITNESS: We evidently did because the tradesmen on the job didn't go in.

* * * *

2486 Q. (By Mr. Bennett) I believe I was asking you about the millwrights when you went to the council. Were you given any authority by the building trades council to govern the picketing out there? A. No, I wasn't given the authority.

Q. Was the local given the authority, the millwright local? A. They weren't given any authority, no.

Q. Will you tell us who was given authority? A. We put it on. We understood the building trades had recognized the fact we had a legitimate

reason to put a picket line on because of the latest national agreement.

Q. You called the pickets? A. Yes.

Q. You told them where and when to appear? A. That's right.

Q. And some of the pickets called others? A. Yes, and Mr. Duncan called some.

2491

LUCIEN M. WEIR

a witness called by and on behalf of the Millwrights, being first duly sworn, was examined and testified as follows:

HEARING OFFICER: Give the reporter your full name and address please.

2492

DIRECT EXAMINATION

Q. (By Mr. O'Hare) Mr. Weir, you say you are secretary treasurer of the Carpenters District Council? A. Right.

Q. Will you tell us whether that is an elective or appointive job?
A. Elective.

2685

Friday, July 10, 1964

2688

LUCIEN M. WEIR

resumed the stand, was examined and testified further, as follows:

2729

CROSS EXAMINATION

Q. (By Mr. Bennett) Has your international withdrawn recognition of National Joint Board decisions on matters of jurisdictional disputes at any time during the month of June, 1964? A. I believe they have.

2777

Q. Now, Mr. Weir, you have served on the Carpenters' District Council? A. Yes.

Q. Do you represent the millwrights in any other capacity? A. Yes.

Q. What is that capacity? A. Well, the millwrights is the subordinate body to the District Council.

Q. Are the millwrights a subordinate body to the carpenters' local
2778 also? A. Carpenters' District Council?

Q. Carpenters' District Council? A. Yes.

* * * *

2792 Q. Mr. Weir, we were talking about the Executive Board and Building Trades Council. Is it a standard procedure of the Building Trades Council to hear member unions' requests for consideration of picket lines?

* * * *

2793 A. The Building Trades Council doesn't aid in the picketing at the request of anyone.

Q. Mr. Weir, I didn't ask you if they aided in the picketing. I asked you if it was the standard practice for them to hear their requests regarding proposed picket lines. A. Well, no.

* * * *

2795 Q. Mr. Weir, did they make an exception in the case of the Millwrights at the Ternstedt plant? A. No, sir, they did not.

Q. It wasn't standard practice, and they didn't make an exception. How did they come to hear that request? A. There was no request made for a picket line. My testimony shows that I told them I was going to picket. I didn't ask them. I told them what I was going to do.

Q. Are you telling us here that there was no request by the Millwrights for the Board to take any action regarding picketing? A. I asked them to hear our grievance.

Q. How about the pickets? A. I didn't ask them to picket. I told them that I was going to.

* * * *

Q. Would you answer yes or no, if you asked them to aid you in any way in your proposed picketing? A. I didn't ask them to aid me in picketing.

Q. Then your answer is no? A. I think I have told you that I advised them I was going to pocket. That was my decision when I went there.

a witness called by and on behalf of the Millwrights, being first duly sworn, was examined and 'es' filed, as follows:

2985 RECROSS EXAMINATION

Q. (By Mr. Bennett) In response to a question raised by Mr. O'Hare, I would like to ask a question. Sir, have you ever participated in or been invited to participate in the decisions of the National Joint Board for the Settlement of Jurisdictional Disputes in the Building Trades Industry? A. No.

Q. Has the National Joint Board for the Settlement of Jurisdictional Disputes ever rendered a job decision affecting your company? A. Not that I know of.

2986 DONALD JARDINE

a witness called by and on behalf of the Millwrights', having been previously duly sworn, was examined and testified, as follows:

HEARING OFFICER: Let the record show Mr. Jardine has previously been sworn.

DIRECT EXAMINATION

Q. (By Mr. O'Hare; Mr. Jardine, will you tell us what company you represent? A. I represent Industrial Contracting Corporation.

2989

CROSS EXAMINATION

2994

Q. (By Mr. Bennett) Mr. Jardine, have you or a representative of your company ever served on the National Joint Board for the Settlement of Jurisdictional Disputes? A. No.

Q. Have you ever been invited to serve on that Board? A. No.

Q. Have you ever had any voice -- have you ever had any voice in a decision which they rendered? A. No, sir.

* * * *

2997

JOHN KELLY

a witness called by and on behalf of the Millwrights, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION

Q. (By Mr. O'Hare) Sir, will you give your name and address to the reporter, please? A. John Kelly, 7145 Tireman, Detroit.

Q. What is your occupation, Mr. Kelly? A. Myself?

Q. Yes. A. General Manager of Gale Industrial Rigging.

Q. Is Gale Industrial Rigging a member of Heavy Haulers Division, Michigan Cartagemen's Association? A. Yes, they are.

Q. Would you tell us, as briefly as you can, what kind of work Gale Industrial Rigging does? A. Well, we are in the machinery moving business, as -- we don't do any hauling. I will explain this, now. We have a separate division in our company for the hauling of any machinery that might be done by our company, but we do disassemble it, load it, unload it, and set, align and level.

* * * *

3006

CROSS EXAMINATION

Q. (By Mr. Bennett) Have you ever served on the National Joint Board for the Settlement of Jurisdictional Disputes? A. No.

Q. Have you ever been invited to serve on that Board or any representative of your company? A. Not that I am aware of, no.

* * * *

3012

ROBERT F. THOMSON

a witness called by and on behalf of the Millwrights, being first duly sworn, was examined and testified, as follows:

* * * * *
DIRECT EXAMINATION

Q. (By Mr. O'Hare) Mr. Thomson, would you identify the Company that you are connected with? A. I'll tell you fellows you will have to speak loud.

Q. Would you identify the company that you are with? A. Detroit Riggers and Erectors, Incorporated.

Q. What position do you hold with that company? A. President.

3019

* * * * *
CROSS EXAMINATION

3020 Q. (By Mr. Bennett) Have you or any member of your firm ever participated in or been invited to participate in deliberations of the national joint board for settlement of jurisdictional disputes in the building trades industry? A. Have we ever --

Q. Have you ever participated in any board decisions? A. No.

3021

Q. But you have never actually sat on the board or had any of your people set on the national joint board as a member of that board? A. No.

* * * * *
RECROSS EXAMINATION

3023 Q. (By Mr. Roumell) Mr. Thomson, you are a former member of local 1102, is that correct, the millwrights? A. Yes, I have been a member.

Q. And you are today with Detroit Riggers, you prefer to use riggers, is that correct? A. Yes.

3026

AFTER RECESS

JOHN J. LAHEY

a witness called by and on behalf of the Millwrights was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. O'Hare) Mr. Lahey, what is your occupation? A. Machinery Moving contractor.

Q. What company do you work for? A. Lahey, Inc.

Q. What is your position with that company? A. President.

3033

CROSS EXAMINATION

Q. (By Mr. Bennett) Have you ever sat on or participated in decisions of the national joint board for settlement of jurisdictional disputes? A. I don't think I follow the question.

Q. Do you know what the National Joint Board for Settling Jurisdictional Disputes is? A. Yes.

Q. Have you or any representative of your company, representing your company ever sat on that board? A. No.

Q. Have you ever had a representative on that board? A. No.

3169

Monday, July 20, 1964

3250

JOHN E. BROWN

a witness called by and on behalf of the Riggers, being first duly sworn, was examined and testified, as follows:

HEARING OFFICER: Will you give the reporter your full name and address, please?

THE WITNESS: John E. Brown, 6016 Penrod, Detroit, Michigan.

DIRECT EXAMINATION

Q. (By Mr. Bennett) What is your occupation, Mr. Brown?
A. Rigger.

Q. How long have you been engaged in that occupation? A. Twelve years.

Q. Are you presently employed? A. Yes.

Q. What is the name of the company for whom you are presently working? A. Don Cartage.

Q. How long have you been an employee of that company? A. Ten years.

3253 Q. Do you recall any other jobs this year? A. That I have been on this year?

Q. Yes. A. I was on the Ternstedt job.

Q. For Don Cartage? A. Yes.

Q. Is that the job where the millwrights struck the job? The job in question here? A. Yes.

3254 Q. What did you do on that job? A. I was the foreman on that job.

Q. As a foreman on that job were you approached by the Millwrights on any occasion? A. Yes, I was.

Q. For what purpose? A. The millwrights wanted to put on millwrights -- the millwright steward.

Q. What did you tell him? A. I told him I didn't have authority.

Q. Did he ask you who did? A. Yes.

Q. What did you tell him? A. Royce Richards.

Q. Who is Royce Richards? A. President of Don Cartage.

Q. How many times were you approached? A. Every day I was there.

Q. Did you give the same answer every day? A. Yes.

Q. Were you threatened at any time? A. Well, I was told if I didn't put them on they were going to put a picket line up.

Q. How many times were you told this? A. Well, I was told that two days before we lost the job.

3255 Q. What sort of work were you doing? A. Well, I was setting presses, straight line buffing machines.

Q. How do you set a press? A. We were picking them up with two lift trucks.

Q. Then what did you do? A. We laid our floor out with the chalk line and we set them to their location, according to what the print called for.

Q. Then what happened? A. We lined and leveled them.

Q. Then what happened? A. That was all we done to them.

Q. Were they ready to operate at that point, or did they have to be further worked on? A. Well, as far as the actual setting of the machinery, the electricians had to wire them, and the pipe fitters had to put the air to them before they were ready to operate.

Q. Was there any further aligning required? A. No.

Q. Any further leveling required? A. No.

Q. Any further movement required? A. No.

Q. Any further cleaning required? A. Not that I know of.

3256 Q. What other equipment did you work on at that job? A. Installing straight line buffing machines.

Q. Lining? A. I said according to the print. Put a chalk line down and set it according to what the print called for.

Q. Did you level them? A. It didn't require no leveling.

Q. Did you use pads on any of this equipment? A. Yes, we had a rubber pad.

Q. What was the purpose of the pads? A. So they wouldn't have to anchor the machine.

Q. Any other purpose? A. No, not that I know of.

Q. You were foreman on this job? A. Yes, I was.

Q. How many men in your crew? A. Four, including myself.

Q. Including yourself? A. Yes.

3257

Q. Any millwrights on that job? On the job which you were working on? A. You mean for Don Cartage?

Q. Yes. A. Or on the whole job?

Q. For Don Cartage? A. There was none on the Don Cartage job.

Q. Were there millwrights on any other part of the job? A. Yes.

Q. What were they doing? A. Putting up a conveyor for Jervis Webb.

Q. That's where the millwrights were coming from who were harassing you? A. Yes.

Q. Who was the gentleman who came to you? A. I don't know the gentleman's name. He was the millwright steward, or at least he had a millwright steward's button on.

Q. Were you doing work with riggers that you normally do for Don Cartage? A. I do that type of work every day for Don Cartage.

Q. Do you use millwrights? A. No.

Q. Is Don Cartage a general contractor or a specialty contractor?

A. Don Cartage is strictly a rigging contractor.

Q. What do you mean when you say strictly a rigging contractor?

A. That is their primary business, moving machinery.

3353

Tuesday, July 21, 1964

3468

* * * * *
EDWARD B. NUTTER

a witness called by and on behalf of the Riggers, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Bennett) Give your full name and address to the hearing officer and the reporter. A. My name is Edward B. Nutter, and my address is 31506 Leona, Garden City, Michigan.

Q. What is your occupation? A. Rigger, machinery mover and erector.

Q. How long have you been so engaged? A. Well, I have been with local 575 I would say since 1945.

Q. Continuously since that time? A. Yes.

Q. By whom are you presently employed? A. Don Cartage Company.

Q. Is that a cartage contractor? A. They belong to the cartage-men's association.

Q. How long have you been employed by Don Cartage? A. Ever since I have been in Detroit, ever since I worked as a rigger.

Q. Since 1945? A. Yes. In fact, I worked there before for awhile.

* * * * *

3474 Q. How many men were in that rigging crew? How many men were in your crew? A. Oh, I would say four and myself.

* * * * *

3505 * Wednesday, July 22, 1964 *

3529 * JOHN PATRICK QUINN *

a witness called by and on behalf of the Riggers, being first duly sworn, was examined and testified, as follows:

* * * * *

3530 DIRECT EXAMINATION

Q. (By Mr. Bennett) Your address? A. 14287 Beach Daily, Taylor, Michigan.

Q. And your occupation, Mr. Quinn? A. Rigger.

Q. How long have you been a rigger? A. Oh, twenty-four years.

Q. Twenty-four years. Whom are you presently employed by? A. Don Cartage Company.

Q. How long have you been employed by them? A. I started with them in August of 1943.

HEARING OFFICER: What year?

THE WITNESS: 1943.

Q. (By Mr. Bennett) Are you working in a supervisory capacity for Don Cartage? A. Part of the time, yes.

Q. What would that be, Mr. Quinn? A. Oh, general foreman on the job.

Q. As a general foreman are you required to supervise every phase of the job? A. Yes, I am.

* * * * *

3533 Q. What building trades were represented on that job? A. Well, there was Bolling Electric Company, there was Howard Electric, there was John Green Pipefitters and Plumbers, there was Construction Pipe Contractors, there was J. A. Utley, Gallagher and Frazer Sheet Metal Workers, and there was Broad Steel Erection.

Q. Were these electrical companies using building trades electricians? A. Yes.

Q. A pipefitting outfit using building trades pipe fitters? A. Yes.

Q. Were they building trades sheet metal workers? A. Yes.

3534 Q. And with Steel erection, was that ironworkers? A. Ironworkers
25.

Q. Any building trades cement masons out there? A. Utley had some.

Q. Any building trades plumbers? A. Yes.

Q. And the in-plant maintenance people were working for G. M.? A. Yes.

Q. Were there in-plant maintenance electricians, if you know? A. Yes, they had two maintenance people.

Q. In-plant maintenance pipefitters, plumbers? A. I think they had two.

Q. In-plant maintenance machinists? A. They had material handlers unloading the stock, bringing it in.

Q. Were there any other in-plant maintenance people on the job? Any other craft? A. They had what they call millwrights there. They had five.

Q. They were employees of General Motors? A. Yes.

Q. What sort of work were they doing? A. They had some new presses that came in that wasn't in our contract to unload, but we got the contract to set them and so they unloaded them.

Q. Took them off the truck? A. Took them off the truck and placed them on the floor.

Q. And you took them and set them? A. We took them and set them.

Q. When you say "we" you mean riggers? A. Riggers. Don Cartage.

Q. You were a foreman or general foreman. A. General foreman.

Q. Did the riggers do the lining? A. Yes, they did.

Q. And did the riggers do the leveling? A. Yes.

Q. Did the riggers do the unloading? A. Yes.

Q. With the exception of these new machines? A. Yes.

Q. Did the riggers do the bolting? A. They did if there was any.

Q. Was there some bolting? A. There was, there was some.

Q. The riggers did the assembly and erection? A. Yes.

Q. Were pads used on the job? A. Yes.

3536 Q. And did riggers place the pads? A. Yes.

Q. As general foreman were you familiar with the nature of the

contract with the customer? A. I don't --

* * * *

3539 Q. On March 3rd a picket line occurred? A. Yes.

Q. Were you present when that picket line occurred? A. Yes, I was.

Q. Do you know who walked in that picket line? A. Well, the names or identifications, the only one that I knew and I contacted many times was Charlie Duncan and George Horn.

Q. Did they both walk in the picket line? A. Yes.

Q. Carry signs? A. Charlie Duncan did.

Q. Did George Horn carry a sign? A. George Horn stood back talking to probably his members, but he was there.

* * * *

3540 Q. Did you inform the company that a picket line had appeared?

A. Yes I did.

Q. Who did you talk to? A. I talked with Royce Richards, and John Blue was on the job. He was there.

* * * * *

3541

(The document heretofore marked Riggers No. 23 for identification was received in evidence.)

Q. After that picket line appeared did you observe any of the building trades people whom you have previously described leaving the job? A. Yes, they did.

3542

Q. Did you observe any of those building trades people cross that picket line after it appeared? A. Nobody crossed the line.

Q. Was it your observation that all of the building trades people respected that picket line that morning and refused to cross it? A. Yes, they did. But Howard Electric worked two twelve-hour shifts. They worked from twelve noon until twelve midnight, and from twelve midnight until twelve noon. When I came in at seven thirty in the morning I talked to the electrician steward.

HEARING OFFICER: To who?

THE WITNESS: The electrician steward, on the night shift for Howard Electric. And I asked him what he was going to do. If he was going to finish his shift at twelve o'clock and he stated that he would have to call his business agent.

* * * * *

3543

A. I talked to the electricians' steward, whose name was Don McClosky. He told me he would have to call Dan Diamond and find out what they were supposed to do, finish the shift or if they would leave.

* * * * *

3545

Q. (By Mr. Bennett) Did Mr. McClosky come back and talk to you after he told you he was going to talk to Mr. Diamond on the phone? A. Yes, he did.

Q. Did he tell you that he had talked to Mr. Diamond? A. Yes.

Q. Did he tell you that he was going to leave the job? A. He told me they were leaving the job at nine o'clock.

Q. Did he tell you why he was leaving?

* * * *

3546 Q. Did he tell you why he was leaving the job? A. Because there was a picket line authorized by the Building Trades, he said.

Q. Did he leave the job? A. Yes, he did.

Q. With his crew? A. Yes. They were the last ones to leave.

* * * *

3587 Q. Did you talk to any representatives of the Carpenters and Millwrights at the time of the Ternstedt dispute? A. Yes.

* * * *

3642 * * * * * Wednesday, July 29, 1964

3645 * * * * * PAUL C. ALLEN

a witness called by and on behalf of the Riggers, being first duly sworn, was examined and testified as follows:

HEARING OFFICER: Will you give the reporter your full name and address please.

THE WITNESS: Paul C. Allen, 481 Wouth Bellevue Road, Lake Orien, Michigan.

DIRECT EXAMINATION

Q. (By Mr. Bennett) What is your occupation, Mr. Allen? A. I am business manager riggers and machinery erectors local union 575, Detroit, Michigan.

Q. How long have you held that position? A. Since 1941, June.

Q. Is that an elective office? A. An elective office.

* * * *

3685 Q. Did the dismantling of this equipment involve bolting?

3686 MR. O'HARE: Objection. Dismantling of equipment is outside the notice of this hearing.

HEARING OFFICER: I think the stipulation of the parties at the opening of this hearing, at the request of all of the parties to broaden the scope of the notice of hearing covered not the moving but dismantling was covered and evidence was submitted by the charging party and the intervenor and by the millwrights with respect, if I am correct, to certain dismantling. You can answer the question if you know.

MR. BENNETT: I will withdraw the question.

Q. (By Mr. Bennett) What was the demand of the millwright on that occasion? A. The millwright claimed the unboltting and dismantling and cutting of the anchor bolts, the preparation of the machinery for moving, handling by chainfalls, various other work.

Q. Did this demand include demands that hadn't previously been made by millwrights for riggers work? A. They expanded the claim they had previously made in Flint.

3691 HEARING OFFICER: The motion to strike is denied. I think evidence has been taken, offered by Don Cartage Company, intervenor, and millwrights with respect to areas of dismantling of equipment if it entailed removing of bolts, anchor bolts and everything else in the operation.

3693 HEARING OFFICER: There is another problem too. We have one dispute and one notice of hearing but at the request of the parties, the stipulation entered into by Mr. O'Hare, Mr. Roumell, Mr. Prebenda and Mr. Bennett, the scope of this hearing was broadened.

3694 MR. O'HARE: To cover all of the contractors in the entire geographical jurisdiction of the two unions. I don't think, Mr. Hearing Officer, you will find any place on this record, where I have stipulated that this hearing should cover the work of dismantling because we have never claimed in this hearing we were doing anything except trying to enforce the Dunlop award, which does not purport to cover dismantling.

3719 HEARING OFFICER: The hearing will be in order. I would like to make a few rulings I reserved. Number one, with respect to Mr. O'Hare's motion to strike from the record testimony of Mr. Allen here with respect to dismantling, is denied. Millwrights exhibit number 1, the Dunlop award, refers to dismantling for relocation or storage and distinguishes between dismantling by power equipment and dismantling by manual, manually.

* * * *

FORM NLRB-50B
(2-60)Form Approved
Budget Bureau No. 64-R003-11

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO.	7-CD-97(1)
DATE FILED	3-4-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME MILLWRIGHTS LOCAL UNION 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

ADDRESS

124 Sibley Street, Detroit, Michigan 48201

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b)(1) SUBSECTION(S) (4)(D) (List subsections) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addressees, plants involved, dates, places, etc.)

Since on or about March 3, 1964, the above-named labor organization by its officers, agents and representatives engaged in, induced or encouraged, individuals employed by Don Cartage Co., Ternstedt Division, General Motors Corporation, persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services and has threatened, coerced and restrained Don Cartage Co., Ternstedt Division, General Motors Corporation, persons engaged in commerce or in an industry affecting commerce an object thereof being to force or require Don Cartage Co. to assign the moving placement and erection of machinery to employees who are members of MILLWRIGHTS LOCAL UNION 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO rather than to employees who are members of RIGGERS AND MACHINERY ERECTORS, MACHINERY MOVERS LOCAL UNION NO. 575, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS OF AMERICA, AFL-CIO with whom said employee Don Cartage Co. has a collective bargaining agreement.

3. NAME OF EMPLOYER

Don Cartage Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

Ternstedt Division, General Motors Corporation, Plant #9
West Chicago near Schaeffer, Detroit, Michigan

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesale, etc.)

Factory

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Machinery movers

7. NO. OF WORKERS EMPLOYED

App. 30

8. FULL NAME OF PARTY FILING CHARGE

Don Cartage Co.

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)

5150 16th Street, Detroit, Michigan

10. TEL. NO.

TY 8-4600

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

By James E. Haggerty Jr.
(Signature of representative or person making charge)

March 4, 1964

(Date)

Attorney

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 366535

G. C. Exhibit 1(b)

MILLWRIGHTS LOCAL UNION 1102,
UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF
AMERICA, AFL-CIO

Respondent,

and

DON CARTAGE CO.

Charging Party,

and

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION
NO. 575, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNA-
MENTAL IRON WORKERS OF AMERICA,
AFL-CIO

Case No. 7-CD-97(1)

Party to the Dispute.

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that pursuant to Section 10(b) of the National Labor Relations Act, a charge has been filed alleging the above-named labor organization(s) MILLWRIGHTS LOCAL UNION 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO, has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b) of the Act. A copy of the charge is attached hereto.

YOU ARE FURTHER NOTIFIED, pursuant to Section 10(k) of the Act, that, unless within 10 days after receipt of this notice of charge filed the parties to the dispute alleged in said charge submit to the undersigned satisfactory evidence that they have adjusted said dispute or have agreed upon methods for the voluntary adjustment thereof, the Board is empowered and directed to hear and determine the dispute out of which the said unfair labor practice charge arose if it is determined that the said charge has merit.

IN WITNESS WHEREOF, the undersigned Acting Regional Director has caused this notice of charge filed to be signed at Detroit, Michigan, on this 4th day of March, 1964.

/s/ Jerome H. Brooks
Acting Regional Director
National Labor Relations Board

* * *

7-54
7-26-63

March 5, 1964

Millwrights Local Union 1102, United Brotherhood
of Carpenters and Joiners of America, AFL-CIO
124 Sibley Street
Detroit, Michigan 48201

Re: Millwrights Local Union 1102, United Brotherhood
of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(1)

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We shall appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. This case has been assigned to Raymond A. Shemke who will contact you soon. Should you so desire, you are invited to telephone the agent at 226-3222 concerning this matter. Please cooperate with this office so that all facts of the case may be considered.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]

[JURAT the 6th day of March, 1964]

7-55
3-18-63

March 5, 1964

REGISTERED MAIL

Don Cartage Co.
5150 16th Street
Detroit, Michigan

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(1)

Gentlemen:

Receipt is acknowledged of the charge filed by you in the above-captioned matter, a copy of which is enclosed.

If you have not already done so, you are expected to supply to this office in writing the names, addresses, and telephone numbers of all witnesses who may be expected to substantiate the allegations in your charge. Any documentary evidence in the form of letters, notes, contracts, etc., that may be in your possession should also be forwarded.

You should send the information requested above, including documentary evidence to this office by return mail. It is possible that you may find it difficult or impossible to obtain certain information pertaining to your witnesses or to procure documents important to your case, in which event it is requested that you so advise Board Agent Raymond A. Shemke, whose telephone number is 226-3222. All further communications should be directed to this Agent.

Attached is a copy of Form NLRB 4541 pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosure

[Reverse Side — Certificate of Service]

[Reverse Side — JURAT the 6th day of March, 1964]

G. C. Exhibit 1(c)

7-61
Rev. 6-21-63

March 5, 1964

Riggers and Machinery Erectors,
Machinery Movers Local Union No. 575,
International Association of Bridge,
Structural and Ornamental Iron Workers
of America, AFL-CIO
3703 Fenkell
Detroit, Michigan

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(1)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(c)

7-61
Rev. 6-21-63

March 5, 1964

General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attn: Aloysius F. Power, General Counsel

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(1)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

cc: Ternstedt Division, General Motors Corporation,
Plant #9, West Chicago near Schaeffer, Detroit, Michigan

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(c)

SHEMK

ANTHONY J. LICARI

Served by REGISTERED 3-5-64
dated 3-4-64

Chg. Against Labor Org. Or its Agents
 with Notice of Charge Filed, form 4541 and
 Patt. Ltrs. 7-54, 7-55 or 7-61.

In the matter of: Millwrights Local Union 1102, United Brotherhood
 of Carpenters and Joiners of America,
 AFL-CIO (Don Cartage Co.)

Case No. 7-CD-97(1) thru (5) on the following:

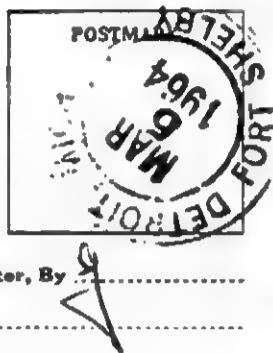
Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO 124 Sibley Street Detroit, Michigan 48201	(7-54)	6 7 6 9 0
Don Cartage Co. 5150 16th Street Detroit, Michigan	(7-55)	6 7 6 9 1
Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO 3703 Fenkell Detroit, Michigan	(7-61)	6 7 6 9 2
General Motors Corporation General Motors Building Detroit 2, Michigan Attn: Aloysius F. Power, General Counsel	(7-61)	6 7 6 9 3
Ternstedt Division, General Motors Corporation, Plant #9 West Chicago near Schaeffer Detroit, Michigan	(7-61)	6 7 6 9 4

BEST CO

from the cr

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SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

M. Laing

DATE DELIVERED

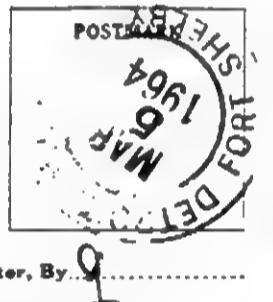
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3-6-64

CS8-16-71546-5-F GPO

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Don C. Estay Jr.

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V. T. All

DATE DELIVERED

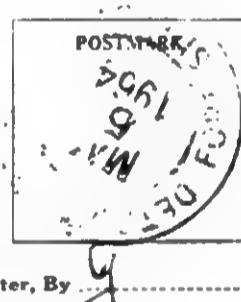
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*MAR 6 1964**MAR 6 1964*

CS8-16-71546-5-F GPO

REGISTERED NO. 67692

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To.....

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RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Ruggers & 71575

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

R. Schaefer

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

3-6-64

CS8-16-71546-5-F GPO

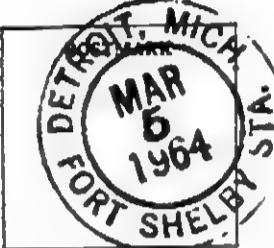
REGISTERED NO. 67693

Value \$..... Spec. del'ly fee \$.....
 Fee \$..... Ret. receipt fee \$.....
 Surcharge \$..... Rest. del'ly fee \$.....
 Postage \$..... Airmail

From.....

To.....

POD Form 3806—Oct. 1960



Postmaster, By.....

048-10-70403-5

INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY to addressee Show address where delivered
 (Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

J.M. Long

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

C. Granda

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

MAR 6 1964

048-10-70403-5 F GPO

REGISTERED NO. 67694

Value \$..... Spec. del'ly fee \$.....
 Fee \$..... Ret. receipt fee \$.....
 Surcharge \$..... Rest. del'ly fee \$.....
 Postage \$..... Airmail

From.....

To.....

POD Form 3806—Oct. 1960



Postmaster, By.....

048-10-70403-5

INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY to addressee Show address where delivered
 (Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Fernando De

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

3-6-64

SHOW WHERE DELIVERED (only if requested)

048-10-70403-5 F GPO

BEST CO

from the on

FORM NLRB-508
(2-60)Form Approved
Budget Bureau No. 64-R003-11UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO.

7-CD-97(2)

DATE FILED

3-4-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME CARPENTERS DISTRICT COUNCIL OF DETROIT, WAYNE AND OAKLAND COUNTIES AND VICINITY,
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO

ADDRESS

2988 E. Grand Boulevard, Detroit, Michigan

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES
WITHIN THE MEANING OF SECTION 8(B)(1) SUBSECTION(S) (4)(D) (List subsections) OF THE NATIONAL LABOR RELATIONS ACT.
AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 3, 1964, the above-named labor organization, by its officers, agents and representatives, engaged in, induced or encouraged, individuals employed by Don Cartage Co., Ternstedt Division, General Motors Corporation, persons engaged in commerce or in an industry affecting commerce to engage in a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to any services and has threatened, coerced and restrained Don Cartage Co., Ternstedt Division, General Motors Corporation, persons engaged in commerce or in an industry affecting commerce an object thereof being to force or require Don Cartage Co. to assign the moving, placement and erection of machinery to employees who are members of MILLRIGHTS LOCAL UNION 1102, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO rather than to employees who are members of RIGGERS AND MACHINERY ERECTORS, MACHINERY MOVERS LOCAL UNION NO. 575, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS OF AMERICA, AFL-CIO with whom said employee Don Cartage Co. has a collective bargaining agreement.

3. NAME OF EMPLOYER

Don Cartage Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

Ternstedt Division, General Motors Corporation, Plant #9
West Chicago near Schaeffer, Detroit, Michigan

5. TYPE OF ESTABLISHMENT (Factory, mine, whar-

shop, etc.)

Factory

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Machinery movers

7. NO. OF WORKERS
EMPLOYED

App. 30

8. FULL NAME OF PARTY FILING CHARGE

Don Cartage Co.

9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)

5150 16th Street, Detroit, Michigan

10. TEL. NO.

TY 8-4600

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

By Ronald E. Augenstein Jr.
(Signature of representative or person making charge)

March 4, 1964

(Date)

Attorney

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 888523

114)

G. C. Exhibit 1(e)

CARPENTERS DISTRICT COUNCIL OF
DETROIT, WAYNE AND OAKLAND
COUNTIES AND VICINITY, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO

Respondent,

and

DON CARTAGE CO.

Charging Party,

and

Case No. 7-CD-97(2)

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION
NO. 575, INTERNATIONAL ASSOCIATION
OF BRIDGE, STRUCTURAL AND ORNA-
MENTAL IRON WORKERS OF AMERICA,
AFL-CIO

Party to the Dispute.

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that pursuant to Section 10(b) of the National Labor Relations Act, a charge has been filed alleging the above-named labor organization(s) CARPENTERS DISTRICT COUNCIL OF DETROIT, WAYNE AND OAKLAND COUNTIES AND VICINITY, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO has engaged in an unfair labor practice within the meaning of paragraph(4)(D) of Section 8(b) of the Act. A copy of the charge is attached hereto.

YOU ARE FURTHER NOTIFIED, pursuant to Section 10(k) of the Act, that, unless within 10 days after receipt of this notice of charge filed the parties to the dispute alleged in said charge submit to the undersigned satisfactory evidence that they have adjusted said dispute or have agreed upon methods for the voluntary adjustment thereof, the Board is empowered and directed to hear and determine the dispute out of which the said unfair labor practice charge arose if it is determined that the said charge has merit.

IN WITNESS WHEREOF, the undersigned Acting Regional Director has caused this notice of charge filed to be signed at Detroit, Michigan, on this 5th day of March, 1964.

/s/ Jerome H. Brooks
Acting Regional Director
National Labor Relations Board
Seventh Region ***

G. C. Exhibit 1(f)

7-54
7-26-63

March 5, 1964

Carpenters District Council of Detroit,
Wayne and Oakland Counties and
Vicinity, United Brotherhood of
Carpenters and Joiners of America,
AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(2)

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We shall appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. This case has been assigned to Raymond A. Shemke who will contact you soon. Should you so desire, you are invited to telephone the agent at 226-3222 concerning this matter. Please cooperate with this office so that all facts of the case may be considered.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(f)

7-55
3-18-63

March 5, 1964

Don Cartage Co.
5150 16th Street
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(2)

Gentlemen:

Receipt is acknowledged of the charge filed by you in the above-captioned matter, a copy of which is enclosed.

If you have not already done so, you are expected to supply to this office in writing the names, addresses, and telephone numbers of all witnesses who may be expected to substantiate the allegations in your charge. Any documentary evidence in the form of letters, notes, contracts, etc., that may be in your possession should also be forwarded.

You should send the information requested above, including documentary evidence to this office by return mail. It is possible that you may find it difficult or impossible to obtain certain information pertaining to your witnesses or to procure documents important to your case, in which event it is requested that you so advise Board Agent Raymond A. Shemke, whose telephone number is 226-3222. All further communications should be directed to this Agent.

Attached is a copy of Form NLRB 4541 pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosure

[Reverse Side - Certificate of Service]

[Reverse Side - JURAT the 6th day of March, 1964]

G. C. Exhibit 1(f)

7-61
Rev. 6-21-63

March 5, 1964

Riggers and Machinery Erectors,
Machinery Movers Local Union
No. 575, International Associa-
tion of Bridge, Structural and
Ornamental Iron Workers of
America, AFL-CIO
3703 Fenkell
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(2)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL
[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(f)

7-61
Rev. 6-21-63

March 5, 1964

General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attention: Aloysius F. Power, General Counsel

Re: Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(2)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your co-operation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures

REGISTERED MAIL

cc: Ternstedt Division, G.M.C. Plant #9
West Chicago near Schaeffer, Detroit, Michigan

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(f)

SHEMKE

ANTHONY J. LICARI

Served by REGISTERED 3-5-64

Charge Against Labor Org. or Its Agents
with 7-54 7-61 7-55 Form 4541
and Notice of Charge Filed

Dated 3-5-64

In the matter of: Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)

Case No. 7-CD-97(2) on the following.

Carpenters District Council of Detroit, Wayne
and Oakland Counties and Vicinity, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

[See 7-CD-97(4)]

Don Cartage Co.
5150 16th Street
Detroit, Michigan

[See 7-CD-97(1)]

Riggers and Machinery Erectors, Machinery
Movers Local Union No. 575, International
Association of Bridge, Structural and Orna-
mental Iron Workers of America, AFL-CIO
3703 Fenkell
Detroit, Michigan

[See 7-CD-97(1)]

General Motors Corporation
General Motors Building
Detroit 2, Michigan
Attention: Aloysius F. Power,
General Counsel [See 7-CD-97(1)]

cc: Ternstedt Division,
General Motors Corporation, Plant #9
West Chicago near Schaeffer
Detroit, Michigan

[See 7-CD-97(1)]

Form NLRB-508
(2-60)Form Approved
Budget Bureau No. 64-R003.12

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO.
3-11-64DATE FILED
3-11-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME **Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO**

ADDRESS

124 Sibley Detroit, Michigan

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) **(4)(D)** (Last subsections) OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 3, 1964, the above-named labor organization, through its agents and representatives, has engaged in and has induced and encouraged individuals employed by Terstedt Division, General Motors Corporation and Don Cartage Co. to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, and has threatened, coerced and restrained Terstedt Division, General Motors Corporation and Don Cartage Co., an object thereof being to force and require Don Cartage Co. to assign particular work to members of Millwrights Local Union 1102, rather than to members of Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, AFL-CIO.

3. NAME OF EMPLOYER
Don Cartage Co.4. LOCATION OF PLANT INVOLVED (Street, City, and State)
5150 16th Street, Detroit, Michigan5. TYPE OF ESTABLISHMENT (Factory, mine, wholesale, etc.)
Machinery Movers6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE
Moving machinery7. NO. OF WORKERS EMPLOYED
658. FULL NAME OF PARTY FILING CHARGE
John Quinn9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)
14287 Beech-Daly, Taylor, Michigan10. TEL. NO.
WH 1-2936

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

BY John Quinn
(Signature of representative or person making charge)

March 4, 1964

(Date)

An Individual

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 888533

173

MILLWRIGHTS LOCAL UNION 1102,
UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF
AMERICA, AFL-CIO

Respondent,

and

JOHN QUINN

Charging Party,

and

RIGGERS AND MACHINERY
ERECTORS, MACHINERY MOVERS
LOCAL UNION NO. 575

Party to the Dispute.

CASE NO. 7-CD-97(3)

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that pursuant to Section 10(b) of the National Labor Relations Act, a charge has been filed alleging the above-named labor organization(s) Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b) of the Act. A copy of the charge is attached here-to.

YOU ARE FURTHER NOTIFIED, pursuant to Section 10(k) of the Act, that, unless within 10 days after receipt of this notice of charge filed the parties to the dispute alleged in said charge submit to the undersigned satisfactory evidence that they have adjusted said dispute or have agreed upon methods for the voluntary adjustment thereof, the Board is empowered and directed to hear and determine the dispute out of which the said unfair labor practice charge arose if it is determined that the said charge has merit.

IN WITNESS WHEREOF, the undersigned Acting Regional Director has caused this notice of charge filed to be signed at Detroit, Michigan, on this 5th day of March, 1964.

/s/ Jerome H. Brooks
Acting Regional Director
National Labor Relations Board
Seventh Region ***

G. C. Exhibit 1(i)

7-54
7-26-63

March 5, 1964

Millwrights Local Union 1102, United
Brotherhood of Carpenters and
Joiners of America, AFL-CIO
124 Sibley
Detroit, Michigan

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(3)

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We shall appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. This case has been assigned to Raymond A. Shemke who will contact you soon. Should you so desire, you are invited to telephone the agent at 226-3222 concerning this matter. Please cooperate with this office so that all facts of the case may be considered.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(i)

7-55
3-18-63

March 5, 1964

REGISTERED MAIL

John Quinn
14287 Beech-Daly
Taylor, Michigan

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(3)

Gentlemen:

Receipt is acknowledged of the charge filed by you in the above-captioned matter, a copy of which is enclosed.

If you have not already done so, you are expected to supply to this office in writing the names, addresses, and telephone numbers of all witnesses who may be expected to substantiate the allegations in your charge. Any documentary evidence in the form of letters, notes, contracts, etc., that may be in your possession should also be forwarded.

You should send the information requested above, including documentary evidence to this office by return mail. It is possible that you may find it difficult or impossible to obtain certain information pertaining to your witnesses or to procure documents important to your case, in which event it is requested that you so advise Board Agent Raymond A. Shemke, whose telephone number is 226-3222. All further communications should be directed to this Agent.

Attached is a copy of Form NLRB 4541 pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosure

[Reverse Side - Certificate of Service]

[Reverse Side - JURAT the 6th day of March, 1964]

G. C. Exhibit 1(i)

7-61
Rev. 6-21-63

March 5, 1964

Don Cartage Co.
5150 16th Street
Detroit, Michigan

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(3)

Gentlemen.

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(i)

7-61
Rev. 6-21-63

March 5, 1964

General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attn: Aloysius F. Power, General Counsel

Re: Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America,
AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(3)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your co-operation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

cc: Ternstedt Division, General Motors Corporation,
Plant #9, West Chicago near Schaeffer
Detroit, Michigan

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(i)

SHEMK

ANTHONY J. LICARI

Served by REGISTERED 3-5-64

Charge Against Labor Org. or its Agents
with Notice of Charge Filed, Form 4541
and Patt. Ltrs. 7-54, 7-55 and 7-61

Dated 3-5-64

In the matter of Millwrights Local Union 1102, United
Brotherhood of Carpenters and Joiners
of America, AFL-CIO (Don Cartage Co.)

Case No. 7-CD-97(3) on the following:

Millwrights Local Union 1102, United
Brotherhood of Carpenters and
Joiners of America, AFL-CIO

124 Sibley
Detroit, Michigan (7-54) [See 7-CD-97(1)]

John Quinn
14287 Beech-Daly
Taylor, Michigan (7-55) [See 7-CD-97(4)]

Don Cartage Co.
5150 16th Street
Detroit, Michigan (7-61) [See 7-CD-97(1)]

General Motors Corporation
General Motors Building
Detroit 2, Michigan (7-61)
Attn: Aloysius F. Power,
General Counsel [See 7-CD-97(1)]

Ternstedt Division, General
Motors Corporation, Plant #9
West Chicago near Schaeffer
Detroit, Michigan (7-61) [See 7-CD-97(1)]

FORM NO. 10 MARCH 1950 GSA GEN. REG. NO. 27		Form Approved Budget Bureau No. 54-8003.11	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS			
INSTRUCTIONS: File in original and in four copies of the charge and an additional copy for each organization, agent, local and non-local individual named in item 1 with the NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.		DO NOT WRITE IN THIS SPACE CASE NO. 7-CD-97(l) DATE FILED 3-4-64	
1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
NAME Carpenters District Council of Detroit, Wayne, Oakland, Macomb, St. Clair, Sanilac, and Monroe Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO ADDRESS 2988 E. Grand Boulevard Detroit, Michigan			
THE ABOVE-NAMED ORGANIZATION OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(b) SUBSECTION(S) (4)(D) <small>(List subsections)</small> OF THE NATIONAL LABOR RELATIONS ACT, AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.			
2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.) Since on or about March 3, 1964, the above-named labor organization, through its agents and representatives, has engaged in and has induced and encouraged individuals employed by Ternstedt Division, General Motors Corporation and Don Cartage Co. to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, and has threatened, coerced and restrained Ternstedt Division, General Motors Corporation and Don Cartage Co., an object thereof being to force and require Don Cartage Co. to assign particular work to members of Millwrights Local Union 1102, rather than to members of Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, AFL-CIO.			
3. NAME OF EMPLOYER Don Cartage Co.			
4. LOCATION OF PLANT INVOLVED (Street, City, and State) 5150 16th Street, Detroit, Michigan			
5. TYPE OF ESTABLISHMENT (Factory, mine, wholesale, etc.) Machinery Movers	6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE Moving machinery	7. NO. OF WORKERS EMPLOYED 65	
8. FULL NAME OF PARTY FILING CHARGE John Quinn			
9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State) 14287 Beech-Daly, Taylor, Michigan		10. TEL. NO.	
11. DECLARATION			
I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF. BY <u>John Quinn</u> <small>(Signature of representative or person making charge)</small>			
March 4, 1964 <small>(Date)</small>		An Individual <small>(Title or office, if any)</small>	
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)			

CARPENTERS DISTRICT COUNCIL OF
DETROIT, WAYNE, OAKLAND, MACOMB,
ST. CLAIR, SANILAC, AND MONROE
COUNTIES AND VICINITIES, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO

Respondent,

and

JOHN QUINN

Charging Party,

and

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION
NO. 575, AFL-CIO

Party to the Dispute.

Case No. 7-CD-97(4)

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that pursuant to Section 10(b) of the National Labor Relations Act, a charge has been filed alleging the above-named labor organization(s) CARPENTERS DISTRICT COUNCIL OF DETROIT, WAYNE, OAKLAND, MACOMB, ST. CLAIR, SANILAC, AND MONROE COUNTIES AND VICINITIES, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO has engaged in an unfair labor practice within the meaning of paragraph(4)(D) of Section 8(b) of the Act. A copy of the charge is attached hereto.

YOU ARE FURTHER NOTIFIED, pursuant to Section 10(k) of the Act, that, unless within 10 days after receipt of this notice of charge filed the parties to the dispute alleged in said charge submit to the undersigned satisfactory evidence that they have adjusted said dispute or have agreed upon methods for the voluntary adjustment thereof, the Board is empowered and directed to hear and determine the dispute out of which the said unfair labor practice charge arose if it is determined that the said charge has merit.

IN WITNESS WHEREOF, the undersigned Acting Regional Director has caused this notice of charge filed to be signed at Detroit, Michigan, on this 5th day of March, 1964.

/s/ Jerome H. Brooks
Acting Regional Director
National Labor Relations Board,
Seventh Region * * *

G. C. Exhibit 1(l)

7-54
7-26-63

March 5, 1964

Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and
Monroe Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and
Monroe Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(4)

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We shall appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. This case has been assigned to Raymond A. Shemke who will contact you soon. Should you so desire, you are invited to telephone the agent at 226-3222 concerning this matter. Please cooperate with this office so that all facts of the case may be considered.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(1)

7-55
3-18-63

March 5, 1964

John Quinn
14287 Beech-Daly
Taylor, Michigan

Re: Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and Monroe
Counties and Vicinities, United Brotherhood of
Carpenters and Joiners of America, AFL-CIO
(Don Cartage Co.)
Case No. 7-CD-97(4)

Dear Sir:

Receipt is acknowledged of the charge filed by you in the
above-captioned matter, a copy of which is enclosed.

If you have not already done so, you are expected to supply
to this office in writing the names, addresses, and telephone num-
bers of all witnesses who may be expected to substantiate the alle-
gations in your charge. Any documentary evidence in the form of
letters, notes, contracts, etc., that may be in your possession
should also be forwarded.

You should send the information requested above, including
documentary evidence to this office by return mail. It is possible
that you may find it difficult or impossible to obtain certain infor-
mation pertaining to your witnesses or to procure documents im-
portant to your case, in which event it is requested that you so ad-
vise Board Agent Raymond A. Shemke, whose telephone number is
226-3222. All further communications should be directed to this
Agent

Attached is a copy of Form NLRB 4541 pertaining to our
investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosure

[Reverse Side - Certificate of Service]

[Reverse Side - JURAT the 6th day of March, 1964]

G. C. Exhibit 1(l)

7-61
Rev. 6-21-63

March 5, 1964

Riggers and Machinery Erectors,
Machinery Movers Local Union
No. 575, AFL-CIO
3703 Fenkell
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and
Monroe Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(4)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your co-operation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(1)

7-61
Rev. 6-21-63

March 5, 1964

General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attention: Aloysius F. Power, General Counsel

Re: Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and
Monroe Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(4)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

cc: Ternstedt Division, G.M.C. Plant #9
West Chicago near Schaeffer, Detroit, Michigan

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(1)

7-61
Rev. 6-21-63

March 5, 1964

Don Cartage Co.
5150 16th Street
Detroit, Michigan

Re: Carpenters District Council of Detroit, Wayne,
Oakland, Macomb, St. Clair, Sanilac, and
Monroe Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO (Don Cartage Co.)
Case No. 7-CD-97(4)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(l)

SHEMK

ANTHONY J. LICARI

Served by REGISTERED 3-5-64

Charge Against Labor Org. or Its Agents
 with 7-54 7-55 7-61 Form 4541
 and Notice of Charge Filed

Dated 3-4-64

In the matter of Carpenters District Council of Detroit, Wayne,
 Oakland, Macomb, St. Clair, Sanilac, and
 Monroe Counties and Vicinities, United
 Brotherhood of Carpenters and Joiners of
 America, AFL-CIO (Don Cartage Co.)

Case No. 7-CD-97(4) on the following.

Carpenters District Council of Detroit, Wayne,
 Oakland, Macomb, St. Clair, Sanilac, and
 Monroe Counties and Vicinities, United
 Brotherhood of Carpenters and Joiners of
 America, AFL-CIO
 2988 E. Grand Boulevard
 Detroit, Michigan

67696

John Quinn
 14287 Beech-Daly
 Taylor, Michigan

67695

[cc:] Riggers and Machinery Erectors,
 Machinery Movers Local Union
 No. 575, AFL-CIO
 3703 Fenkell
 Detroit, Michigan

[See 7-CD-97(1)]

General Motors Corporation
 General Motors Building
 Detroit 2, Michigan
 Attention: Aloysius F. Power,
 General Counsel

[See 7-CD-97(1)]

Ternstedt Division, General Motors
 Corporation, Plant #9
 West Chicago near Schaeffer
 Detroit, Michigan

[See 7-CD-97(1)]

Don Cartage Co.
 5150 16th Street
 Detroit, Michigan

[See 7-CD-97(1)]

BEST CO

from the ori

REGISTERED NO. 67696.

Value \$ *1.00* Spec. del'y fee \$Fee \$ *1.00* Ret. receipt fee \$

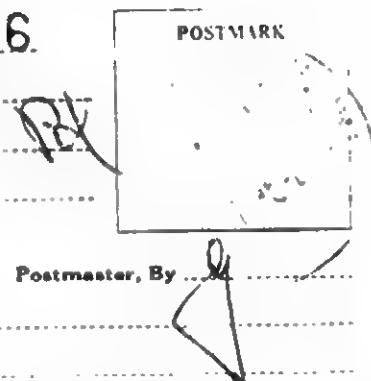
Surcharge \$ Rest. del'y fee \$

Postage \$ *1.00* Airmail

From

To

POSTMARK



Postmaster, By

POD Form 3806—Oct. 1960

G48-16-70493-3

G48-16-71546-8-7 GPO

INSTRUCTIONS TO DELIVERING EMPLOYEE Deliver ONLY to addressee Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

C. D. C.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Peggy Ellis

DATE DELIVERED

AR 6 1964

SHOW WHERE DELIVERED (only if requested)

REGISTERED NO. 67695

Value \$ *1.00* Spec. del'y fee \$Fee \$ *1.00* Ret. receipt fee \$

Surcharge \$ Rest. del'y fee \$

Postage \$ *1.00* Airmail

From

To

POD Form 3806—Oct. 1960

G48-16-70493-3

G48-16-71546-8-7 GPO

INSTRUCTIONS TO DELIVERING EMPLOYEE Deliver ONLY to addressee Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

John Quinn

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Mrs John Quinn

DATE DELIVERED

3-6-64

SHOW WHERE DELIVERED (only if requested)

FORM NLRB-508
(2-60)Form Approved
Budget Bureau No. 04-R003-11UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS

INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

CASE NO. 7-SC-27(1)

DATE FILED 3-1-64

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

NAME

Detroit Building Trades Council

ADDRESS

2988 E. Grand Boulevard, Detroit, Michigan

THE ABOVE-NAMED ORGANIZATION(S) OR ITS AGENTS HAS (HAVE) ENGAGED IN AND IS (ARE) ENGAGING IN UNFAIR LABOR PRACTICES WITHIN THE MEANING OF SECTION 8(B)(1) SUBSECTION(S) (4)(D) (List subsections) OF THE NATIONAL LABOR RELATIONS ACT. AND THESE UNFAIR LABOR PRACTICES ARE UNFAIR LABOR PRACTICES AFFECTING COMMERCE WITHIN THE MEANING OF THE ACT.

2. BASIS OF THE CHARGE (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

Since on or about March 3, 1964, the above-named labor organization, through its agents and representatives, has engaged in and has induced and encouraged individuals employed by Ternstedt Division, General Motors Corporation and Don Cartage Co., to engage in a strike or a refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials or commodities or to perform any services, and has threatened, coerced, and restrained Ternstedt Division, General Motors Corporation and Don Cartage Co., an object thereof being to force and require Don Cartage Co. to assign particular work to members of Millwrights Local Union 1102, rather than to members of Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, AFL-CIO.

3. NAME OF EMPLOYER
Don Cartage Co.

4. LOCATION OF PLANT INVOLVED (Street, City, and State)

5150 16th Street, Detroit, Michigan

5. TYPE OF ESTABLISHMENT (Factory, mine, wholesale, retail, etc.)
Machinery Movers

6. IDENTIFY PRINCIPAL PRODUCT OR SERVICE

Moving machinery7. NO. OF WORKERS
EMPLOYED

65

8. FULL NAME OF PARTY FILING CHARGE
John Quinn9. ADDRESS OF PARTY FILING CHARGE (Street, City, and State)
14287 Beech-Daly, Taylor, Michigan

10. TEL. NO.

WH 1-2936

11. DECLARATION

I DECLARE THAT I HAVE READ THE ABOVE CHARGE AND THAT THE STATEMENTS THEREIN ARE TRUE TO THE BEST OF MY KNOWLEDGE AND RELIEF.

By John Quinn
(Signature of representative or person making charge)

March 4, 1964

An Individual

(Date)

(Title or office, if any)

WILFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 1001)

GPO 888933

1/2a)

DETROIT BUILDING TRADES COUNCIL
Respondent,

and

JOHN QUINN, AN INDIVIDUAL
Charging Party,
and

CASE No. 7-CD-97(5)

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION
NO. 575, AFL-CIO

Party to the Dispute

NOTICE OF CHARGE FILED

PLEASE TAKE NOTICE that pursuant to Section 10(b) of the National Labor Relations Act, a charge has been filed alleging the above-named labor organization(s) DETROIT BUILDING TRADES COUNCIL, has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of Section 8(b) of the Act. A copy of the charge is attached hereto.

YOU ARE FURTHER NOTIFIED, pursuant to Section 10(k) of the Act, that, unless within 10 days after receipt of this notice of charge filed the parties to the dispute alleged in said charge submit to the undersigned satisfactory evidence that they have adjusted said dispute or have agreed upon methods for the voluntary adjustment thereof, the Board is empowered and directed to hear and determine the dispute out of which the said unfair labor practice charge arose if it is determined that the said charge has merit.

IN WITNESS WHEREOF, the undersigned Acting Regional Director has caused this notice of charge filed to be signed at Detroit, Michigan, on this 5th day of March, 1964.

/s/ Jerome H. Brooks.
Acting Regional Director
National Labor Relations Board,
Seventh Region * * *

G. C. Exhibit 1(o)

7-54
7-26-63

March 5, 1964

Detroit Building Trades Council
2988 E Grand Boulevard
Detroit, Michigan

Re: Detroit Building Trades Council
(Don Cartage Co.)
Case No. 7-CD-97(5)

Gentlemen:

A charge has been filed with this office alleging that you have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. A copy of the charge is herewith served upon you. Also enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

We shall appreciate receiving from you promptly a full and complete written account of the facts and a statement of your position in respect to the allegations set forth in the charge. This case has been assigned to Raymond A. Shamke who will contact you soon. Should you so desire, you are invited to telephone the agent at 226-3222 concerning this matter. Please cooperate with this office so that all facts of the case may be considered.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(o)

7-55
3-18-63

March 5, 1964

REGISTERED MAIL

John Quinn
14287 Beech-Daly
Taylor, Michigan

Re: Detroit Building Trades Council
(Don Cartage Co.)
Case No. 7-CD-97(5)

Gentlemen:

Receipt is acknowledged of the charge filed by you in the above-captioned matter, a copy of which is enclosed.

If you have not already done so, you are expected to supply to this office in writing the names, addresses, and telephone numbers of all witnesses who may be expected to substantiate the allegations in your charge. Any documentary evidence in the form of letters, notes, contracts, etc., that may be in your possession should also be forwarded.

You should send the information requested above, including documentary evidence to this office by return mail. It is possible that you may find it difficult or impossible to obtain certain information pertaining to your witnesses or to procure documents important to your case, in which event it is requested that you so advise Board Agent Raymond A. Shemke, whose telephone number is 226-3222. All further communications should be directed to this Agent.

Attached is a copy of Form NLRB 4541 pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosure

[Reverse Side - Certificate of Service]
[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(o)

7-61
Rev. 6-21-63

March 5, 1964

Don Cartage Co.
5150 16th Street
Detroit, Michigan

Re: Detroit Building Trades Council
(Don Cartage Co.)
Case No 7-CD-975;

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(o)

7-61
Rev. 6-21-63

March 5, 1964

General Motors Corporation
General Motors Building
Detroit 2, Michigan

Attn: Aloysius F. Power, General Counsel

Re: Detroit Building Trades Council
(Don Cartage Co.)
Case No. 7-CD-97(5)

Gentlemen:

A charge has been filed with this office alleging that those named above have engaged and are engaging in unfair labor practices within the meaning of the National Labor Relations Act, as amended. Because the outcome of the case may affect your interests, a copy of the charge is herewith served upon you.

So that we may have your version of the facts at the same time as that of the charging party, we shall appreciate your cooperation by favoring us at your earliest possible convenience with a written description of the facts and circumstances, as you know them, concerning the allegations contained in the charge.

In contacting this office regarding this matter, please call Board Agent Raymond A. Shemke at 226-3222 or direct any mail to the attention of the Agent.

Enclosed is a copy of Form NLRB 4541, pertaining to our investigative and voluntary adjustment procedures.

Very truly yours,

/s/ Jerome H. Brooks
Acting Regional Director

Enclosures
REGISTERED MAIL

cc: Ternstedt Division, General Motors Corporation, Plant #9
West Chicago near Schaeffer, Detroit, Michigan

[Certificate of Service]

[JURAT the 6th day of March, 1964]

G. C. Exhibit 1(o)

SHEMKE

ANTHONY J. LICARI

Served by REGISTERED 3-5-64

Charge Against Labor Org. or its Agents,
Notice of Charge Filed, Form 4541 with
Patt. Ltr. 7-54, 7-55 and 7-61.

Dated 3-5-64

In the matter of Detroit Building Trades Council
(Don Cartage Co.)

Case No. 7-CD-97(5) on the following:

Detroit Building Trades Council
2988 E. Grand Boulevard 67701
Detroit, Michigan

cc: John Quinn
14287 Beech-Daly
Taylor, Michigan [See 7-CD-97(4)]

Don Cartage Co.
5150 16th Street
Detroit, Michigan [See 7-CD-97(1)]

General Motors Corporation
General Motors Building
Detroit 2, Michigan
Attn: Aloysius F. Power, General Counsel [See 7-CD-97(1)]

Ternstedt Division, General Motors Corpora-
tion, Plant #9
West Chicago near Schaeffer
Detroit, Michigan [See 7-CD-97(1)]

REGISTERED NO. 67701

Value \$ 1.00 Spec. del'y fee \$.00
 Fee \$.10 Ret. receipt fee \$.10
 Surecharge \$.00 Rest. del'y fee \$.00
 Postage \$.10 Airmail

From.....

To.....

Postmaster, By J**INSTRUCTIONS TO DELIVERING EMPLOYEE** Deliver ONLY to addressee Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in.)

R. B. J.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

E. Shuford

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

3/11/642 1964

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

MILLWRIGHTS' LOCAL NO. 1102, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO; CAR-
PENTERS' DISTRICT COUNCIL OF DETROIT,
WAYNE AND OAKLAND COUNTIES AND
VICINITIES, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO

and

CASES NOS. 7-CD-97(1)
(2)

DON CARTAGE COMPANY

MILLWRIGHTS' LOCAL NO. 1102, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO; CAR-
PENTERS' DISTRICT COUNCIL OF DETROIT,
WAYNE AND OAKLAND COUNTIES AND
VICINITIES, UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA,
AFL-CIO; DETROIT AND WAYNE COUNTY,
OAKLAND AND MACOMB COUNTIES, MICH-
IGAN, BUILDING AND CONSTRUCTION
TRADES COUNCIL (Don Cartage Company)

and

CASES NOS. 7-CD-97(3)
(4)
(5)

JOHN QUINN, an individual

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 22nd day of April, 1964, at 9:30 a.m., Eastern Standard Time, in Room 555, Book Building, 1249 Washington Boulevard, Detroit, Michigan, pursuant to Section 10(k) of the National Labor Relations Act, a hearing will be conducted before a Hearing Officer of the National Labor Relations Board upon the dispute alleged in each Charge attached to the Notice of Charge Filed issued on this matter on the 5th day of March, 1964. At said hearing, the parties will have the right to appear in person or otherwise and give testimony.

The dispute concerns the assignment of the following work tasks: Lining, leveling, and anchoring of machinery and equipment, which work has been assigned to employees who are members of, or represented by, Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, and who are not members of, or represented by, Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, but which latter organization claims jurisdiction over said work.

IN WITNESS WHEREOF, the undersigned Acting Regional Director, on behalf of the Board, has caused this Notice of Hearing to be signed at Detroit, Michigan, on this 9th day of April, 1964.

[SEAL]

/s/ Jerome H. Brooks
Acting Regional Director
National Labor Relations Board
Seventh Region * * *

G. C. Exhibit 1(q)

AFFIDAVIT OF SERVICE OF — NOTICE OF HEARING
DATE OF MAILING — 4/9/64

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document(s) by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Millwrights' Local No. 1102, United Brotherhood
of Carpenters and Joiners of America, AFL-CIO (Respondent - 7-CD-97(1), (3)
124 Sibley
Detroit, Michigan

Carpenters' District Council of Detroit, Wayne
and Oakland Counties and Vicinities, United
Brotherhood of Carpenters and Joiners of
America, AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

(Respondent - 7-CD-97(2), (4)

Detroit and Wayne County, Oakland and Macomb
Counties, Michigan, Building and Construction
Trades Council
2988 E. Grand Boulevard
Detroit, Michigan

(Respondent - 7-CD-97(5)

Don Cartage Company
5150 - 16th Street
Detroit, Michigan

(CP - 7-CD-97(1), (2)

John Quinn
14287 Beech-Daly
Taylor, Michigan

(CP - 7-CD-97(3), (4), (5)

Riggers and Machinery Erectors, Machinery
Movers Local Union No. 575, International
Association of Bridge Structural and Orna-
mental Iron Workers of America, AFL-CIO
3711 Fenkell Avenue
Detroit, Michigan

Ternstedt Division, Plant No. 9, General
Motors Corporation
West Chicago Road near Schaeffer Road
Detroit, Michigan

cc:
Rolland O'Hare, Esq.
1256 Penobscot Building
Detroit, Michigan 48226

(Atty. for Millwrights)

Donald J. Prebenda, Esq.
2330 Guardian Building
Detroit, Michigan 48226

(Atty. for Bldg. Trades Coun.)

George T. Roumell, Jr., Esq. (Atty. for Don Cartage)
3380 Penobscot Building
Detroit, Michigan

Frank P. Bennett, Attorney (Atty. for Riggers)
3580 Penobscot Building
Detroit, Michigan 48226

General Motors Legal Department
GM Building, Detroit, Michigan 48202
Attn: Aloysious F. Power, General Counsel

/s/ Anthony J. Licari

[JURAT the 14th day of April, 1964]

AFFIDAVIT OF SERVICE
Sugerman

ANTHONY J. LICARI	Served by REGISTERED	4-9-64
Notice of Hearing	Dated	4-9-64
In the matter of	Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, et al (Don Cartage Company)	
Case No	7-CD-97(1), (2), (3), (4) and (5) on the following.	
Millwrights' Local No 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO 124 Sibley, Detroit, Michigan	12038	(Respondent - 7-CD-97(1), (3))
Carpenters' District Council of Detroit, Wayne, and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO 2988 E Grand Boulevard, Detroit, Michigan	12039	(Respondent - 7-CD-97(2), (4))
Detroit and Wayne County, Oakland and Macomb Counties, Michigan, Building and Construction Trades Council 2988 E Grand Boulevard, Detroit, Michigan	12040	(Respondent - 7-CD-97(5))
Don Cartage Company 5150 - 16th Street, Detroit, Michigan	12041	(CP - 7-CD-97(1), (2))
John Quinn 14287 Beech-Daly, Taylor, Michigan	12042	(CP - 7-CD-97(3), (4), (5))
Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO 3711 Fenkell Avenue, Detroit, Michigan	12043	
Ternstedt Division, Plant No 9, General Motors Corporation, West Chicago Road near Schaeffer Road, Detroit, Michigan	12044	
cc: Rolland O'Hare, Esq., 1256 Penobscot Building, Detroit, Michigan 48226 (Atty for Millwrights)		
Donald J. Prebenda, Esq., 2330 Guardian Building, Detroit, Michigan 48226 (Atty. for Bldg. Trades Coun.)		
George T. Roumell, Jr., Esq., 3380 Penobscot Building, Detroit, Mich (Atty. for Don Cartage)		
Frank P. Bennett, Attorney, 3580 Penobscot Building, Detroit, Mich. 48226 (Atty. for Riggers)		
General Motors Legal Department, GM Building, Detroit 2, Mich., ATTN: Aloysius F. Power, General Counsel		

REGISTERED NO. **12038**

Value \$ **22** Spec. del'y fee \$
 Fee \$ **1** Ret. receipt fee \$
 Surcharge \$ **1** Rest. del'y fee \$
 Postage \$ **1** Airmail

From.....
 To.....

DETROIT, MICH.
APR 9 1964
Postmaster, B6 SHELBY STA.
POSTMARK

POD Form 3806—Oct. 1960 e48-16-70493-5

INSTRUCTIONS TO DELIVERING EMPLOYEE

Deliver ONLY to addressee Show address where delivered
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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)
Millic L. 21 1112

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
M. Laing

DATE DELIVERED	SHOW WHERE DELIVERED (only if requested)
4-10-64	

C55-16-71348-S-F GPO

REGISTERED NO. **12039**

Value \$ **22** Spec. del'y fee \$
 Fee \$ **1** Ret. receipt fee \$
 Surcharge \$ **1** Rest. del'y fee \$
 Postage \$ **1** Airmail

From.....
 To.....

DETROIT, MICH.
APR 9 1964
Postmaster, B6 SHELBY STA.
POSTMARK

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Carpenters J. Council

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Evelyn Weir

DATE DELIVERED	SHOW WHERE DELIVERED (only if requested)
4-10-64	

C55-16-71348-S-F GPO

REGISTERED NO. **12040**

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 Fee \$ **1** Ret. receipt fee \$
 Surcharge \$ **1** Rest. del'y fee \$
 Postage \$ **1** Airmail

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 To.....

DETROIT, MICH.
APR 9 1964
Postmaster, B6 SHELBY STA.
POSTMARK

POD Form 3806—Oct. 1960 e48-16-70493-5

INSTRUCTIONS TO DELIVERING EMPLOYEE

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Chairshaper

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY
Chairshaper

DATE DELIVERED	SHOW WHERE DELIVERED (only if requested)
4-10-64	

C55-16-71348-S-F GPO

REGISTERED NO. 12041

Value \$ 22 Spec. del'y fee \$

Fee \$ Ret. receipt fee \$

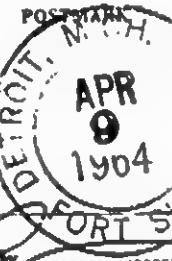
Surcharge \$ Rest. del'y fee \$

Postage \$ 22 Airmail

From.....

To.....

POD Form 3806—Oct. 1960



Postmaster, By

REGISTERED NO. 12042

Value \$ 22 Spec. del'y fee \$

Fee \$ 1 Ret. receipt fee \$ 1

Surcharge \$ Rest. del'y fee \$

Postage \$ 22 Airmail

From.....

To.....

POD Form 3806—Oct. 1960

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Dow Constantine

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

J. G. Lane

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

APR 10 1964

C55-16-71348-8-F GPO

INSTRUCTIONS TO DELIVERING EMPLOYEE

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(Additional charges required for these services)

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

John Quinn

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Mrs John Quinn

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

4-10-64

C55-16-71348-8-F GPO

REGISTERED NO. 12043

Value \$ *m* Spec. del'y fee \$

Fee \$ Ret. receipt fee \$

Surcharge \$ Rest. del'y fee \$

Postage \$ *off* Airmail

Postmaster, By: *3*



From: _____

To: _____

POD Form 3806—Oct. 1960

c4N-16-7049.5

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Piggery Local Union 575

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

4/10/64

c4N-16-7049.5-F GPO

REGISTERED NO. 12044

Value \$ *m* Spec. del'y fee \$

Fee \$ Ret. receipt fee \$

Surcharge \$ Rest. del'y fee \$

Postage \$ *off* Airmail

Postmaster, By: _____



From: _____

To: _____

POD Form 3806—Oct. 1960

c4N-16-7049.5

INSTRUCTIONS TO DELIVERING EMPLOYEE

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Ternstedt

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Walter M. Cearny

DATE DELIVERED

SHOW WHERE DELIVERED (only if requested)

4-10-64

c4N-16-7049.5-F GPO

MOTION TO INTERVENE

MICHIGAN CARTAGEMEN'S ASSOCIATION, Heavy Haulers Division, hereinafter called the ASSOCIATION, in accordance with the Rules and Regulations of the National Labor Relations Board, Section 102.29, herewith move to intervene in the above captioned proceedings, a hearing on which having been set for 9:30 A.M., April 22, 1964.

As grounds for intervention in these proceedings, the ASSOCIATION states as follows:

- 1) The ASSOCIATION is a non-profit Michigan corporation having been incorporated in 1948, and is located at 11000 W. McNichols, Detroit, Michigan.
- 2) The ASSOCIATION consists of ten (10) employer members, one of which is DON'S CARTAGE COMPANY, and each such member has given the ASSOCIATION a broad Power of Attorney in labor relations matters.

Members of the ASSOCIATION are: DON'S CARTAGE COMPANY, 5150 16th St., Detroit 8; BARNEY'S CARTAGE COMPANY, 4500 Lawton, Detroit 8; DETROIT RIGGERS & ERECTORS, INC., 11480 Shoemaker, Detroit 13; GENERAL RIGGERS & ERECTORS, INC., 1111 Beaufait, Detroit 7; THOMAS GOODFELLOW, INC., 5201 12th St., Detroit 8; GALE INDUSTRIAL RIGGING & ERECTING CONTRACTING CO., INC., 7145 Tireman, Dearborn; INTERNATIONAL INDUSTRIAL CONTRACTING COMPANY, 1302 Irving, Royal Oak; LAHEY, INC., 6660 Mt. Elliott, Detroit 11; NOR-WEST MACHINERY MOVERS, 15010 W. Warren, Dearborn; and TURNER CARTAGE & STORAGE COMPANY, 1657 Howard, Detroit 16.

The ASSOCIATION as agent and on behalf of its members has negotiated a labor agreement effective from May 1, 1962 to April 30, 1965 with MACHINERY MOVERS, RIGGERS & MACHINERY ERECTORS, LOCAL UNION #575.

3) The aforesaid labor agreement in Section, CRAFT JURISDICTION, sets out that part of the work which the employers shall assign to the Riggers Local #575 shall be:

"The moving, dismantling, erection, handling, assembling and disassembling, lowering, hoisting, unloading, place and locating of all machinery, equipment, apparatus to approximate final location . . . including the use of rollers, jacks, slings, chainfalls"

The aforementioned work, in accordance with the labor agreement, is assigned to about 350 members of Local #575.

4) The work assignment dispute in the above-captioned matter covers work which DON'S CARTAGE COMPANY and all other members of the ASSOCIATION have promised by the aforesaid labor contract to assign to Local #575. The dispute therefore is common to all members of the ASSOCIATION and concerns work assignment in which they all have a common interest.

5) From time to time in the past MILLWRIGHTS' UNION LOCAL #1102 has made demand upon members of the ASSOCIATION for assignment of the aforesaid disputed work to them; but by the aforementioned contract, the ASSOCIATION has promised to assign such work to Local #575.

6) Riggers Union Local #575, in 7-RM-159, July 1, 1957, was certified as the bargaining representative for all employees of members of the ASSOCIATION doing like and analogous work to that which is the subject matter of the instant work assignment dispute.

7) The ASSOCIATION and its members can provide relevant evidence concerning factors which the NLRB will consider in making a decision on the assignment of the disputed work. This evidence includes, in part, the skills and work involved, industry practice, previous assignments made by employers of similar work and the efficient operation of the employers' businesses.

- 8) All members of the ASSOCIATION, as well as DON'S CARTAGE, have an interest in these proceedings as they bear on future costs and efficiency of doing the disputed work.
- 9) It will promote administrative efficiency and serve to prevent future and like litigation if the ASSOCIATION is permitted to intervene and participate in these proceedings.

WHEREFORE, the ASSOCIATION requests that the Regional Director rule favorably on this Motion to Intervene and allow the ASSOCIATION to participate fully in the proceedings so that a decision by the National Labor Relations Board concerning the assignment of the disputed work shall be fully binding not only on the Unions involved herein but binding also on all members of this Association or allow intervention to such extent as the Regional Director may deem proper.

Respectfully submitted,

MICHIGAN CARGEMEN'S
ASSOCIATION
11000 W. McNichols
Detroit, Michigan

by /s/ Charles Quig

Date: April 15, 1964

[Certificate of Service]

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; and Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO

and

Don Cartage Company

CASES NOS.
7-CD-97(1)
(2)

Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Detroit and Wayne County, Oakland and Macomb Counties, Michigan Building and Construction Trades Council; and Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (Don Cartage Company)

and

John Quinn, an individual^{1/}

CASES NOS.
7-CD-97(3)
(4)
(5)

O R D E R

Michigan Cartaglemen's Association, having filed a Motion to Intervene in this proceeding on April 15, 1964, and the undersigned Acting Regional Director having duly considered said Motion,

IT IS HEREBY ORDERED, that proper cause having been shown, said Motion to Intervene is hereby granted.

Dated at Detroit, Michigan, this 16th day of April, 1964.

/s/ Jerome H. Brooks
Acting Director, National Labor
Relations Board, Seventh Region * * *

[SEAL]

^{1/} The caption in this proceeding is hereby amended as set forth above.

G. C. Exhibit 1(t)

AFFIDAVIT OF SERVICE OF
DATE OF MAILING

O R D E R

4/16/64

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by post-paid registered mail upon the following persons, addressed to them at the following addresses:

Michigan Cartaglemen's Association

11000 W. McNichols, Detroit, Michigan

cc: Ternstedt Division, Plant No.
9, General Motors Corporation
West Chicago Road near
Schaefer Road, Detroit,
MichiganMillwrights' Local No. 1102, United
Brotherhood of Carpenters and Joiners
of America, AFL-CIO
124 Sibley, Detroit, MichiganRolland O'Hare, Esq.
1256 Penobscot Building
Detroit, Michigan 48226Carpenters' District Council of Detroit,
Wayne and Oakland Counties and Vicini-
ties, United Brotherhood of Carpenters
and Joiners of America, AFL-CIO
2988 E. Grand Boulevard
Detroit, MichiganDonald J. Prebenda, Esq.
2330 Guardian Building
Detroit, Michigan 48226Detroit and Wayne County, Oakland and
Macomb Counties, Michigan Building
and Construction Trades Council
2988 E. Grand Boulevard
Detroit, MichiganGeorge T. Roumell, Jr., Esq.
3380 Penobscot Building
Detroit, Michigan 48226Don Cartage Company
5150 - 16th Street, Detroit, MichiganFrank P. Bennett, Esq.
15921 W. Seven Mile Road
Detroit, MichiganJohn Quinn
14287 Beech-Daly, Taylor, MichiganGeneral Motors Legal Depart-
ment, General Motors Building
Detroit, Michigan 48226
Attn: Aloysius F. Power,
General CounselRiggers and Machinery Erectors, Ma-
chinery Movers Local Union No. 575,
International Association of Bridge,
Structural and Ornamental Iron Work-
ers of America, AFL-CIO
2877 Fenkell Avenue, Detroit, Michigan

/s/ Anthony J. Licari

[JURAT the 17th day of April, 1964]

G. C. Exhibit 1(t)

FISCHER
AFF. OF SERVICE

Anthony J. Licari

Served by REGISTERED 4-16-64

Order

Dated 4-16-64

In the matter of

Millwrights' Local No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO; Carpenters' District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Don Cartage Company)

Case No.

7-CD-97(1), (2), (3), (4), (5)

on the following.

Michigan Cartagemen's Association
1100 W. McNichols, Detroit, Michigan

71469

cc: Ternstedt Division, Plant
No. 9, General Motors Cor-
poration, West Chicago Road
near Schaefer Road
Detroit, MichiganMillwrights' Local No. 1102, United
Brotherhood of Carpenters and
Joiners of America, AFL-CIO
124 Sibley, Detroit, Michigan

71470

Rolland O'Hare, Esq.
1256 Penobscot Building
Detroit, Michigan 48226Carpenters' District Council of
Detroit, Wayne and Oakland Coun-
ties, and Vicinities, United Brother-
hood of Carpenters and Joiners of
America, AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

71471

Donald J. Prebenda, Esq.
2330 Guardian Building
Detroit, Michigan 48226Detroit and Wayne County, Oakland
and Macomb Counties, Michigan
Building and Construction Trades
Council
2988 E. Grand Boulevard
Detroit, Michigan

71472

George T. Rounell, Jr., Esq.
3380 Penobscot Building
Detroit, Michigan 48226Don Cartage Company
5150 - 16th Street, Detroit, Michigan

71473

Frank P. Bennett, Esq.
15921 W. Seven Mile Road
Detroit, MichiganJohn Quinn
14287 Beech-Daly, Taylor, Michigan

71474

General Motors Legal
Department
General Motors Building
Detroit, Michigan 48226
Attn: Aloysius F. Power,
General CounselRiggers and Machinery Erectors,
Machinery Movers Local Union No.
575, International Association of
Bridge, Structural and Ornamental
Iron Workers of America, AFL-CIO
3877 Fenkell Avenue, Detroit, Michigan 71475

REGISTERED NO. 71469

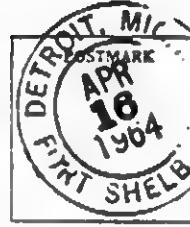
Value \$ Spec. del'y fee \$
 Fee \$ Ret. receipt fee \$
 Surcharge \$ Rest. del'y fee \$
 Postage \$ Airmail

From _____

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POD Form 3806—Oct. 1960

Postmaster, By _____

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G. M. Legeron C. L. Ligaski

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DATE DELIVERED

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GPO-16-71469-5-P-17

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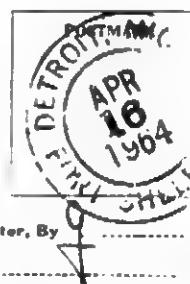
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 Fee \$ Ret. receipt fee \$
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 Postage \$ Airmail

From _____

To _____

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Postmaster, By _____

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T. Miller Z. 21

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C. S. C.

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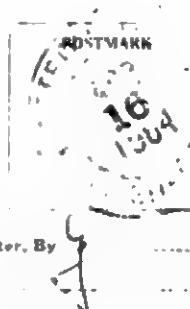
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 Fee \$ Ret. receipt fee \$
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C. S. C. Ligaski

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Value \$ W Spec. del'y fee \$ _____
 Fee \$ Pd Ret. receipt fee \$ Pd
 Surcharge \$ _____ Rest. del'y fee \$ _____
 Postage \$ 50 Airmail



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To _____

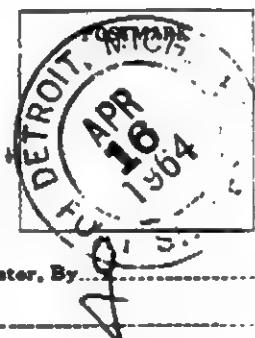
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REGISTERED NO. 71474

Value \$ W Spec. del'y fee \$ _____
 Fee \$ Pd Ret. receipt fee \$ Pd
 Surcharge \$ _____ Rest. del'y fee \$ _____
 Postage \$ 50 Airmail

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To _____

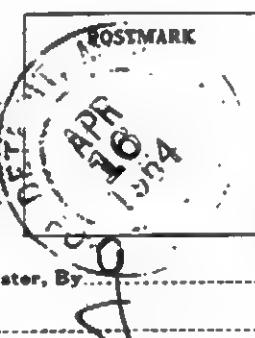
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 Fee \$ Pd Ret. receipt fee \$ Pd
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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Don Cottage

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

J. A. Lany

DATE DELIVERED

APR 17 1964

SHOW WHERE DELIVERED (only if requested)

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Dawn O'Brien

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

K. Lany

DATE DELIVERED

4-17-64

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

Reggie D 71575

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

Officer

DATE DELIVERED

4-17-64

SHOW WHERE DELIVERED (only if requested)

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G. C. Exhibit 1(u)

TELETYPE

DETROIT, MICH. APRIL 20, 1964

ROLLAND O'HARE, ESQ.
1256 PENOBCOT BUILDING
DETROIT, MICH.

(REPORT DELIVERY)

DONALD J. PREBENDA, ESQ.
2330 GUARDIAN BUILDING
DETROIT, MICH.

(REPORT DELIVERY)

GEORGE T. ROUMELL, JR., ESQ.
3380 PENOBCOT BUILDING
DETROIT, MICH.

(REPORT DELIVERY)

FRANK P. BENNETT, ESQ.
15921 W. SEVEN MILE ROAD
DETROIT, MICHIGAN

(REPORT DELIVERY)

GENERAL MOTORS LEGAL DEPARTMENT
ATT: ALOYSIUS F. POWER, GENERAL
COUNSEL, GENERAL MOTORS BUILDING
DETROIT, MICH.

(REPORT DELIVERY)

MICHIGAN CARTAGEMEN'S ASSOCIATION
11000 W. McNICHOLS, DETROIT, MICH.

(REPORT DELIVERY)

MILLWRIGHTS' LOCAL 1102, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO
124 SIBLEY, DETROIT, MICH.

(REPORT DELIVERY)

CARPENTERS DISTRICT COUNCIL OF
DETROIT, WAYNE AND OAKLAND
COUNTIES AND VICINITIES, UNITED
BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, AFL-CIO
2988 E. GRAND BOULEVARD
DETROIT, MICH.

DETROIT AND WAYNE COUNTY, OAKLAND
AND MACOMB COUNTIES, MICHIGAN
BUILDING AND CONSTRUCTION TRADES
COUNCIL
2988 E. GRAND BLVD., DETROIT, MICH.

DON CARTAGE COMPANY
5150 SIXTEENTH STREET, DETROIT, MICH.

JOHN QUINN
14287 BEECH-DALY, TAYLOR, MICH.

(REPORT DELIVERY)

RIGGERS AND MACHINERY ERECTORS,
MACHINERY MOVERS LOCAL UNION
575, INT'L ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL
IRON WORKERS OF AMERICA, AFL-CIO
2877 FENKELL AVENUE, DETROIT, MICH.

TERNSTEDT DIV., PLANT NO. 9,
GENERAL MOTORS CORP.
WEST CHICAGO ROAD NEAR SCHAEFER
ROAD, DETROIT, MICHIGAN

APRIL 20, 1964

RE MILLWRIGHTS LOCAL 1102, UNITED BROTHERHOOD OF CAR-PENTERS AND JOINERS OF AMERICA, AFL-CIO, ET AL., CASES NOS. 7-CD-97(1) THROUGH (5). HEARING SCHEDULED APRIL 22, 1964, IS HEREBY POSTPONED TO APRIL 30, 1964, SAME TIME AND PLACE.

JEROME H. BROOKS, ACTING
REGIONAL DIRECTOR
NLRB - 7th REGION

b

[4/20/64

Telephoned 4:55 PM

/s/ bb]

G. C. Exhibit 1(v)

**AFFIDAVIT OF SERVICE OF
DATE OF MAILING****TELETYPE POSTPONING HEARING**

4/20/64

I, the undersigned employee of the National Labor Relations Board, being duly sworn, depose and say that on the date indicated above I served the above-entitled document by teletype upon the following persons, addressed to them at the following addresses:

Rolland O'Hare Esq.
1256 Penobscot Building
Detroit, Michigan

cc: Carpenters District Council of Detroit,
Wayne and Oakland Counties and Vicinities.
United Brotherhood of Carpenters and
Joiners of America, AFL-CIO
2988 E. Grand Boulevard
Detroit, Michigan

Donald J. Prebenda, Esq.
2330 Guardian Building
Detroit, Michigan

cc: Detroit and Wayne County, Oakland and
Macomb Counties, Michigan Building
and Construction Trades Council
2988 E. Grand Blvd., Detroit, Mich.

George T. Roumell, Jr., Esq.
3380 Penobscot Building
Detroit, Michigan

cc: Don Cartage Company
5150 Sixteenth Street
Detroit, Mich.

Frank P. Bennett, Esq.
15921 W. Seven Mile Road
Detroit, Michigan

John Quinn
14287 Beech-Daly,
Taylor, Michigan

General Motors Legal De-
partment Att: Aloysius F.
Power, General Counsel
General Motors Building
Detroit, Michigan

cc: Riggers and Machinery Erectors, Machinery
Movers Local Union 575, Int'l Association
of Bridge, Structural and Ornamental Iron
Workers of America, AFL-CIO
2877 Fenkell Avenue, Detroit, Mich.

Michigan Cartagemen's
Association, 11000 W.
McNichols
Detroit, Michigan

Ternstedt Div., Plant No. 9, General Mo-
tors Corp.
West Chicago Road Near Schaefer Road
Detroit, Michigan

Millwrights' Local 1102,
United Brotherhood of
Carpenters and Joiners
of America, AFL-CIO
124 Sibley
Detroit, Michigan

/s/ Helen Bittner

[JURAT the 22nd day of April, 1964]

TELETYPE

DETROIT, MICH. APRIL 20, 1964

ROLLAND O'HARE, ESQ.
1256 PENOBSCOT BUILDING
DETROIT, MICH. (REPORT DELIVERY)

DONALD J. PREBENDA, ESQ.
2330 GUARDIAN BUILDING (REPORT DELIVERY)
DETROIT, MICH.

GEORGE T. ROUMELL, JR., ESQ.
3380 PENOBSCOT BUILDING (REPORT DELIVERY)
DETROIT, MICH.

FRANK P. BENNETT, ESQ.
15921 W. SEVEN MILE ROAD (REPORT DELIVERY)
DETROIT, MICHIGAN

GENERAL MOTORS LEGAL DEPARTMENT
ATT: ALOYSIUS F. POWER, GENERAL COUNSEL (REPORT DELIVERY)
GENERAL MOTORS BUILDING
DETROIT, MICH.

MICHIGAN CARTAGEMEN'S ASSOCIATION
11000 W. McNICHOLS, DETROIT, MICH. (REPORT DELIVERY)

MILLWRIGHTS' LOCAL 1102, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO
124 SIBLEY, DETROIT, MICH. (REPORT DELIVERY)

CARPENTERS DISTRICT COUNCIL OF DETROIT, WAYNE AND
OAKLAND COUNTIES AND VICINITIES, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO
2988 E. GRAND BOULEVARD, DETROIT, MICH.

DETROIT AND WAYNE COUNTY, OAKLAND AND MACOMB
COUNTIES, MICHIGAN BUILDING AND CONSTRUCTION
TRADES COUNCIL
2988 E. GRAND BLVD., DETROIT, MICH.

DOW CARTAGE COMPANY
5150 SIXTEENTH STREET, DETROIT, MICH.

JOHN QUINN
14287 BEECH-DALY, TAYLOR, MICH. (REPORT DELIVERY)

RIGGERS AND MACHINERY ERECTORS, MACHINERY MOVERS
LOCAL UNION 575, INT'L ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERS OF AMERICA, AFL-CIO
2877 FENKELL AVENUE, DETROIT, MICH.

TERNSTEDT DIV., PLANT NO. 9, GENERAL MOTORS CORP.
WEST CHICAGO ROAD NEAR SCHAEFER ROAD
DETROIT, MICHIGAN

RE MILLWRIGHTS LOCAL 1102, UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA, AFL-CIO, ET AL, CASES NOS. 7-CD-97(1)
THROUGH (5). HEARING SCHEDULED APRIL 22, 1964, IS HEREBY POST-
PONED TO APRIL 30, 1964, SAME TIME AND PLACE.

JEROME H. BROOKS, ACTING REGIONAL DIRECTOR
NLRB - 7th REGION

G. C. Exhibit 1(v)

REPORT DELIVERY
WESTERN UNION

YOUR TELEGRAM APRIL 20 TO MICHIGAN CARTAGEMEN'S ASSOCIATION
DELIVERED 12:41 P.M., APRIL 21, 1964.

APRIL 21, 1964
3:07 P.M.

MGM:mp

REPORT DELIVERY

TO: JEROME H. BROOKS

YOUR TELETYPE TO MILLWRIGHTS LOCAL 1102, UNITED BROTHERHOOD
OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO OF THE 20TH WAS
DELIVERED 9:35 A.M. ON APRIL 21, 1964.

WESTERN UNION

OKM:jp

REPORT DELIVERY

SENT TO: GENERAL MOTORS LEGAL DEPARTMENT, ATTENTION:
ALOYSIUS F. POWER DELIVERED ON APRIL 21, 1964 AT 9:10 A.M.

WESTERN UNION

OKM:jp

APRIL 21, 1964
11:55 A.M.

TO: MR. BROOKS

YOUR TELEGRAM OF APRIL 20, 1964, TO ROLLAND O'HARE, ESQ., WAS
DELIVERED AT 8:50 A.M., APRIL 21, 1964.

OKM/jm

G. C. Exhibit 1(v)

WESTERN UNION
REPORT DELIVERY

SENT TO DONALD J. PREBENDA, ESQ., 2330 GUARDIAN BUILDING, DELIVERED
AT 9:06 A.M. APRIL 21, 1964 TO DONALD J. PREBENDA.

APRIL 21, 1964
10:47 A.M.

EN:mp

APRIL 21, 1964
11:55 A.M.

TO: MR. BROOKS

YOUR TELEGRAM OF APRIL 20, 1964, TO GEORGE P. ROUMELL, JR., ESQ.,
WAS DELIVERED 8:50 A.M., APRIL 21, 1964.

OKM/jm

REPORT DELIVERY
WESTERN UNION
DETROIT

TO: JEROME H. BROOKS

YOUR TELEGRAM APRIL 20 TO FRANK P. BENNETT, ESQ. DELIVERED
11:50 A.M. ON APRIL 21.

APRIL 22, 1964
8:50 A.M.

OKM:as

REPORT DELIVERY
WESTERN UNION
DEARBORN

TO: JEROME H. BROOKS

YOUR TELEGRAM APRIL 20 TO JOHN QUINN DELIVERED 8:55 P.M.

APRIL 21, 1964
8:40 A.M.

OKM:mp

INDEX AND DESCRIPTION OF FORMAL DOCUMENTS

- Board Exhibit 1 (a) Original Charge, 7-CD-97(1), dated 3-4-64
(b) Notice of Charge Filed of 1(a), dated 3-5-64
(c) Affidavit of service of 1(a), dated 3-5-64
(d) Original Charge, 7-CD-97(2), dated 3-4-64
(e) Notice of Charge Filed of 1(d), dated 3-5-64
(f) Affidavit of service of 1(d), dated 3-5-64
(g) Original Charge, 7-CD-97(3), dated 3-4-64
(h) Notice of Charge Filed of 1(g), dated 3-5-64
(i) Affidavit of service of 1(g), dated 3-5-64
(j) Original Charge, 7-CD-97(4), dated 3-4-64
(k) Notice of Charge Filed of 1(j), dated 3-5-64
(l) Affidavit of service of 1(j), dated 3-5-64
(m) Original Charge, 7-CD-97(5), dated 3-4-64
(n) Notice of Charge Filed of 1(m), dated 3-5-64
(o) Affidavit of service of 1(m), dated 3-5-64
(p) Original Notice of Hearing, dated 4-9-64
(q) Affidavit of service of 1(p), dated 4-9-64
(r) Motion to Intervene, dated 4-15-64
(s) Order (granting Motion), dated 4-16-64
(t) Affidavit of service of 1(s), dated 4-16-64
(u) Teletype rescheduling hearing, dated 4-20-64
(v) Affidavit of service of 1(u), dated 4-20-64
(w) Index and Description of Formal Documents

Don Cartage Exhibit 11

WESTERN UNION
TELEGRAM

903A EST MAR 4 64 DEAO31
DE LLJ056 PD AR DETROIT MICH 4 858A EST
DON CARTAGE CO, ATTN JOHN BLUE
5150 16 ST DET

CONFIRMING OUR TELEPHONE CONVERSATION IN MR D E BEAUDRY'S
OFFICE AT 6 PM MARCH 3 1964 PLEASE CONSIDER ALL PURCHASE ORDERS
ISSUED IN CONNECTION WITH THE RELOCATION OF EQUIPMENT TO OUR
PLANT 9 PROPOSAL 17-64 TERMINATED AS OF THIS DATE PLEASE
ACKNOWLEDGE

R F MIKULIC TERNSTEDT DETROIT PLANT

6 PM 3 1964 9 17-64
(02).

RECEIVED 3/4/64
10:30 A.M.

Don Cartage Exhibit 12

WESTERN UNION
TELEGRAM

1014A EST MAR 4 64 DEAO74
DE LLJ111 PD DETROIT MICH 4 959A EST

DON CARTAGE CO
5150 16 ST DET

CORRECTED TELEGRAM.

CONFIRMING OUR CONVERSATION INSTEAD OF TELEPHONE CONVERSATION
IN MR D E BEAUDRY'S OFFICE AT SIX PM MARCH THIRD PLEASE CONSIDER
ALL PURCHASE ORDERS ISSUED IN CONNECTION WITH THE RELOCATION OF
EQUIPMENT TO OUR PLANT NINE PROPOSAL 17-64 TERMINATED AS OF THIS
DATE PLEASE ACKNOWLEDGE

R F MIKULIC TERNSTEDT DETROIT PLANT
(11).

RECEIVED 3/4/64
11:00 A.M.

DON CARTAGE

AGREEMENT

May 1, 1962 TO April 30, 1965

MACHINERY MOVERS, RIGGERS AND
MACHINERY ERECTORS
LOCAL UNION NO. 575

3711 Fenkell Avenue
Detroit 38, Michigan

AND

MICHIGAN CARTAGEMEN'S ASSOCIATION
Heavy Haulers Division

AGREEMENT

THIS AGREEMENT executed and effective as of the 1st day of May, 1962 by and between DON CARTAGE Company, hereinafter referred to as "the Company", and MACHINERY MOVERS, RIGGERS AND MACHINERY ERECTORS LOCAL UNION NO. 575, hereinafter referred to as "the Union", as the sole and exclusive collective bargaining agent for and in behalf of all persons employed as "RIGGERS, MASTER RIGGERS, GENERAL MASTER RIGGERS, AND APPRENTICE RIGGERS, by the Company in all matters pertaining to wages, hours, and other conditions of employment of all persons now employed, and hereinafter to be employed, by the Company, as Riggers, Master Riggers, General Master Riggers, or Apprentice Riggers.

PREAMBLE

THIS AGREEMENT is entered into by collective bargaining to prevent strikes and lockouts and to facilitate peaceful adjustment of grievances and disputes between Employer and Union in this trade and to prevent waste, unnecessary and avoidable delays, and expense, and, so far as possible, to provide for labor's continuous employment, such employment

to be in accordance with the conditions herein set forth and at wages herein agreed upon; also, that stable conditions may prevail in the MACHINERY MOVERS, RIGGERS AND MACHINERY ERECTORS industry and costs may be as low as possible, consistent with fair wages and conditions, and, further, the establishment of the necessary procedures by which these ends may be accomplished.

**INDEX OF AGREEMENT FOR PERIOD
MAY 1, 1962 TO APRIL 30, 1965**

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WITNESSETH THAT THE PARTIES HAVE AGREED AS FOLLOWS:

SECTION I

A. This agreement shall be applicable to all employees of the Company engaged in work as outlined in description entitled "Craft Jurisdiction" in Section III of this Agreement. For the duration of this agreement such work jurisdiction shall be to this Union to the exclusion of all other unions, crafts or employee groups. This agreement is not intended and shall not be construed to extend to office or clerical employees, watchmen, guards, or supervisors. The Company recognizes and will not interfere with the right of its employees to become members of the Union. There shall be no discrimination, restraint or coercion by the Company or any of its agents against the members of the Union because of membership in the Union.

B. The employer agrees that if employees are employed or requested from the office of the Union by the Employer, that such employees hired through the office of the Union must have in their possession the official referral slip of the Union for identification. All employees shall be hired in accordance with an acceptable employment procedure which shall be in conformity with present interpretations of the Labor Management Relations Act as amended, such procedures to be jointly administered. All signators hereto authorize the Heavy Haulers Division of the Michigan Cartagemen's Association or the successors thereof to establish the Joint Employment Committee and agree to be bound by the determinations of such Committee. Signators to this instrument hereby waive all notice of actions to be taken as outlined above and specifically ratify all actions already taken by the aforesaid Committee acting within the scope of their authority.

C. The Company agrees that should any amendments of the Labor Management Relations Act of 1947 or any State Statutes permit closed shop, then in that event the same shall become automatically a part of this agreement.

SECTION II

TERRITORIAL JURISDICTION AND UNION SECURITY CLAUSE

A. The territory covered by this agreement shall be the following thirty-four (34) counties located in the State of Michigan:

Wayne	Isabella
Oakland	Midland
Macomb	Bay
Washtenaw	Clare
Jackson	Gladwin
Ingham	Arenac
Livingston	Roscommon
St. Clair	Agemaw
Clinton	Crawford
Shiawassee	Oscoda
Genessee	Alcona
Lapeer	Otsego
Huron	Montmorency
Sanilac	Alpena
Tuscola	Cheboygan
Saginaw	Presque Isle
Gratiot	Iosco

The execution of this agreement on the part of the Employer shall cover all the operations of the Employer within the territorial jurisdiction described above in accordance with Section III entitled "CRAFT JURISDICTION".

B. The Employer recognizes and acknowledges that the MACHINERY MOVERS, RIGGERS AND MACHINERY ERECTORS LOCAL UNION NO. 575 are the exclusive and certified representatives of all employees in the classification of work covered by this agreement for the purpose of collective bargaining as provided by the LABOR MANAGEMENT RELATIONS ACT AS AMENDED.

C. All present employees who are members of the Union on the effective date of this Sub-section shall remain members of the Union in good standing as a condition of employment. All present employees who are not members of the Union and all employees who are hired hereafter may become and shall remain members in good standing of the Union as a condition of employment on and after the 11th day following the beginning of their employment or on and after the 31st day following the effective date of this sub-section, whichever is the later. This provision shall be made and become effective as of such time as it may be made and become effective under the provisions of the Labor Management Relations Act as amended, but not retroactively.

If the Labor Management Relations Act is amended to a lesser waiting period, such amendment shall take precedence over the thirty-one (31) day clause as outlined herein.

SECTION III CRAFT JURISDICTION

A. The Company hereby agreed to recognize and confirm the right of the Union to the exclusive jurisdiction of all work done by the Company in performing its contractual relations with all other Companies and/or its own Company in connection with the following types of work:

Setting of boilers, all boiler and mud drums, and the erection of steel work in connection with boilers.

The moving, lowering, handling, hoisting, loading, unloading, and placing in an approximate position of all assembled sections of water tube boilers, namely, drum, section, etc., and the moving, handling, dismantling, assembling and disassembling, erection, loading and unloading, hoisting, lowering and placing to approximate, final location of all dies, tools, fixtures, jigs, patterns, pumps, motors, driers, kilns, blowers, fans, compressors (air or otherwise), mixers, crushers, agitators, turbines and condensers; all heavy castings, transformers, reactance coils, all electrical machinery and bottle washers, pasteurizing machines, all printing presses, stokers and all machinery, parts of machinery, equipment, parts

of equipment, apparatus and parts of apparatus. The handling, erection, dismantling, assembling, and disassembling of all rigging equipment used in unloading, moving hoisting, placing to approximate final location, dismantling, assembling and erection of all machinery, equipment, apparatus, and materials handled by Riggers.

The moving, dismantling, erection, handling, assembling and disassembling, lowering, hoisting, unloading, placing and locating of all machinery, equipment, apparatus, to approximate final location; materials, including cranes, whirlies, stiff leg derricks, jin poles, and the erection of all hoisting equipment, including the use of rollers, jacks, slings, chainfalls, rope falls, or any other necessary equipment or tools required to place machinery, parts of machinery, equipment, parts of equipment, apparatus or parts of apparatus, or to perform the work contained herein.

The hoisting, or lowering, or placing on the floor on which they are to be installed by members of the Union, of all safe deposit boxes and vault doors.

The erection of all smoke stacks except those erected in the course of structural steel.

On Subway and Foundation work, the handling, dismantling, assembling and disassembling, loading and unloading, and erecting of all machinery, viz., compressors, motors, pumps, engines, hammers, coolers, receiver tanks, boilers, caissons and ballasts, concrete towers and chutes, blowers and fans.

The erection, dismantling and moving of all derricks, travellers, cranes, cableways, drags, shovels and shafts other than those being used for the erection of structural steel and the signalmen employed thereon. The erection and setting up, placing and removing of all prefabricated tanks with the exception of glass lined tanks, and the erection and setting up of bubbling towers, catylistic towers, scrubbing towers, condensers (whether in one piece or knocked down.)

All erection, dismantling, loading and unloading of all overhead and/or other cranes contracted for by a rigging contractor.

The setting, adjusting, welding and burning on all work as outlined within this section.

The crating, uncrating, shoring and cribbing of all machinery for storage or transit. All necessary shoring to be used in the installation and dismantling of any equipment in connection with and pertaining to work as outlined in this Section.

All building and house moving and raising.

The erection and all other work of installation of all organs, bells, chimes and flag poles.

All work in the preparation and preservation of all equipment, etc., as stated above for storage or other purposes and the maintenance of said preparation and preservation.

All work necessary to be performed for or on trade, industry, product shows, trade fairs, expositions, festivals, exhibits of all kinds, trade exhibits and all exhibitions, manufacturer shows, centennials, etc., shall be the work of the members of this union. It is expressly understood and agreed upon by both parties, signators to this agreement, that the hiring procedures and working conditions of the work covered in this paragraph shall be established by supplemental agreement and those conditions not provided for in the supplemental agreement, only then shall the conditions outlined in this agreement prevail.

SECTION IV

WAGE SCALES

A. The minimum base rate of wages to be paid for the following classifications are:

	May 1, 1962 April 30, 1963	May 1, 1963 April 30, 1964	May 1, 1964 April 30, 1965
Rigger	\$3.65	\$3.75	\$3.85
Master Rigger	3.90	4.00	4.10
General Master Rigger	4.15	4.25	4.35

Apprentices to be prorated according to the Apprentice Standards.

* * * *

Don Cartage Exhibit 22

MICHIGAN CARTAGEMEN'S ASSOCIATION
POWER OF ATTORNEY

We, the undersigned, being members of the Michigan Cartagmen's Association, hereby authorize the duly elected Board of Directors of this association to appoint a committee of five (5) members to negotiate with any and all labor organizations to which our employees are members, with the view of entering into contractual relations with such labor organizations. Said committee is to negotiate what in it's opinion is the best possible contract which can be entered into and to submit same to the members of this association for approval with it's recommendations.

This Power of Attorney shall be effective until revoked in writing.

IN WITNESS WHEREOF we have hereto set our hands, or, in the case of corporate members, we have caused our hands to be set by our duly authorized officers.

Gale Industrial Rigging & Erecting
Contractors, Inc.
(Company)

Dated at Detroit, Michigan

September 11, 1963

By /s/ J. Lee Schoe

Don Cartage Exhibit 31

MICHIGAN CARTAGEMEN'S ASSOCIATION
POWER OF ATTORNEY

We, the undersigned, being members of the Michigan Cartagmen's Association, hereby authorize the duly elected Board of Directors of this association to appoint a committee of five (5) members to negotiate with any and all labor organizations to which our employees are members, with the view of entering into contractual relations with such labor organizations. Said committee is to negotiate what in it's opinion is the best possible contract which can be entered into and to submit same to the members of this association for approval with it's recommendations.

This Power of Attorney shall be effective until revoked in writing.

IN WITNESS WHEREOF we have hereto set our hands, or, in the case of corporate members, we have caused our hands to be set by our duly authorized officers.

DON CARTAGE COMPANY
(Company)

Dated at Detroit, Michigan

FEBRUARY, 1950

By /s/ Donald Richards, Pres.

Don Cartage Exhibit 33

DON Cartage Company
* * *

5150 Sixteenth Street
Detroit 8, Michigan

April 9, 1960

Carpenters District Council
2988 E. Grand Blvd.
Detroit 2, Michigan

Dear Sirs:

This is to advise you that the abovenamed Company does hereby cancel, annul, and rescind the agreement signed on behalf of this Company on October 16, 1957. Such document is entitled "Affidavit of Agreement" and was executed on behalf of the Carpenters District Council by L. M. Weir.

Such document has no termination date within its terms and we accordingly give you notice that such document, in our opinion, upon the execution of this letter shall hereafter be no longer in effect.

Very truly yours,
DON CARTAGE COMPANY

/s/ Donald Jardine
General Manager

DJ:kf

Riggers' Local #575's' Exhibit 1

[This is a physical exhibit that looks like
a big eraser for blackboards.]

Riggers' Exhibit 4

M. A. Hutcheson, General President
United Brotherhood of Carpenters
and Joiners of America

101 Constitution Ave., NW
Washington 1, D. C.

June 3, 1964

Mr. William J. Cour, Chairman
National Joint Board for Settlement
of Jurisdictional Disputes
815 Sixteenth Street N.W.
Washington, D. C. 20006

Dear Mr. Cour:

I have your communications of June 2, 1964 relative to decisions rendered by the Joint Board and advising that our local unions are not complying with same

As you recall, when sitting in, when the negotiating committee met May 6, 1964 I advised the negotiating committee that I am withdrawing our Representative from the Joint Jurisdictional Board and that we were not going to participate in any further cases.

Therefore, if the Board wishes to comply with the request of President Carlough of the Sheet Metal Workers and place our organization in non compliance, we have no objections to your doing so and it will only place us in the same status of some of the other organizations affiliated with the Building and Construction Trades Department.

Therefore, I am not directing our local unions to comply with the decisions rendered on May 21, 1964.

Very truly yours,

/s/ M. A. Hutcheson
General President

MAH-JP

Riggers' Exhibit 39

WESTERN UNION
TELEGRAMC O P Y

1957 September 17

DETROIT MICH 16 1210PME
JOHN H LYONS, GENERAL PRESIDENT
INTERNATIONAL ASSOC OF BRIDGE
STRUCTURAL AND ORNAMENTAL
IRON WORKERS
SUITE 300 CONTINENTAL BLDG
3615 OLIVE ST STL

AT A MEETING THE CONTRACTORS HELD THIS MORNING
SEPTEMBER 16, 1957, IT WAS RESOLVED THAT QUOTE RIG-
GING CONTRACTORS OF DETROIT MICHIGAN AREA FEEL
THAT THE INTERNATIONAL AGREEMENT OF MAY 27, 1957
IS UNWORKABLE FROM THEIR POINT OF VIEW. RIGGING
CONTRACTORS ARE STUDYING THE PROBLEM. WILL PRE-
SENT THE INTERNATIONAL, THE RIGGERS AND THE MILL-
RIGHTS A PLAN OF OPERATION WHICH CAN BE MUTUALLY
AGREEABLE UNQUOTE

HEAVY HAULERS DIVN MICHIGAN CARTAGE MEN
ASSOCIATION
(31)
(157 PM SEP 16 57)

Millwrights' Exhibit 1

M A HUTCHESON General President
United Brotherhood of Carpenters and Joiners
222 E Michigan Street
Indianapolis 4 Indiana

May 27, 1957

J H LYONS General President
International Association of Bridge
Structural and Ornamental Iron Workers
300 Continental Building
St Louis 8 Missouri

Gentlemen:

On May 31, 1956, President M A Hutcheson of the United Brotherhood of Carpenters and Joiners and President J H Lyons of the International Association of Bridge Structural and Ornamental Iron Workers met with the undersigned in Washington D C and considered the jurisdictional disputes between Riggers Local 575 of the International Association of Bridge Structural and Ornamental Iron Workers and Millwrights Local 1102 of the United Brotherhood of Carpenters and Joiners.

A local agreement to arbitrate the issues in dispute had been entered into on March 28, 1955, and signed by Samuel P Tobin, General Representative of the International Association of Bridge Structural and Ornamental Iron Workers, and Paul C Allen, Business Representative of Local 575, International Association of Bridge Structural and Ornamental Iron Workers; and C O Van Horn, General Representative, and L M Weir, representing Millwrights Local 1102 of the United Brotherhood of Carpenters and Joiners. The agreement concerned the following question: "The unloading, moving, handling, placing, erecting, assembling, adjusting, aligning and leveling of all machinery and machine parts affecting the Millwrights Local 1102 and Riggers Local 575."

On February 2, 1956, President M A Hutcheson of the Carpenters and President J H Lyons of the Iron Workers agreed, in part, as follows, since no settlement had been achieved: ". . . both local unions are instructed to settle the issue in question, as they have agreed to do, before April 15, 1956, and to notify the general presidents of the agreement or decision. If the two local unions have not settled the issue in question by April 15, 1956, by agreement or decision, then the two general presidents will establish machinery to make a final and binding settlement or decision."

Inasmuch as no settlement nor decision has been made as agreed by the local unions on March 28, 1955, or as per instructions of February 2, 1956, on May 31, 1956, the two general presidents appointed John T Dunlop with full authority in accordance with the understanding of February 2, 1956, noted above.

M A HUTCHESON
J H LYONS

May 27, 1957

On June 4, 25, and 26, and July 16-18, 1956, conferences and hearings were held in Detroit with representatives of the local unions, the general contractors, the heavy hauling contractors, and other interested parties. Several visits were made to observe the work in operation, and extensive factual reports were furnished by all interested parties. Both local unions and all affected contractors have been fully cooperative in furnishing factual information and in discussing the issues in dispute. Moreover, Mr Dickson and Mr Crowthers, who had been designated by the two local unions, were most helpful, and the information which they had accumulated has been of considerable assistance. Further, conferences have been held with you on August 24, 1956, January 9, 1957, February 25, 1957 and May 21, 1957.

On the basis of this extensive information and the conference with all interested parties, pursuant to the local stipulation to arbitrate and to the agreement and instructions from the two general presidents, the decision is hereby attached.

The attached decision shall only apply to new construction projects, to changeovers where other building and construction crafts are customarily employed, and to changeovers and moving of machinery where both riggers and millwrights have customarily been employed, regardless of whether the contractor is a general contractor or a rigging contractor.

No decision defining jurisdiction, no matter how detailed and precisely drawn, can settle permanently the jurisdictional disputes which have in the past involved these two local unions without a permanent improvement in the personal and official relationships between the responsible local officers. The simple truth, recognized by all parties, is that these two crafts must in fact work together on many types of installations. There must develop a cooperative administration of the attached decision in the interests of practicality and economy of installation. This new spirit must be reflected by responsible officers and demonstrated to the local membership.

In order that the purposes expressed in our conversations of May 31, 1956, may be fully achieved, you will note that the attached decision provides a place for both general presidents to direct the local unions and their members to comply with this decision and further provides space for two officers or representatives of the local unions to direct their local members to comply with the terms of this decision.

Very truly yours,

/s/ John T. Dunlop

JTD/lp
Enclosure

Millwrights' Exhibit 1

Decision

May 27, 1957

1. This decision shall apply only to work in the jurisdiction of Riggers Local 575 of the International Association of Bridge Structural and Ornamental Iron Workers and Millwrights Local 1102 of the United Brotherhood of Carpenters and Joiners. The territorial jurisdiction of Riggers Local 575 is 37 counties in Michigan; and the territorial jurisdiction of Millwrights Local 1102 is 19 counties and parts of two others in Michigan. (See attached letters.)

2. This decision shall in no way affect the jurisdiction of a third trade, nor have any effect upon a jurisdictional dispute between any two other organizations.

3. In accordance with the arbitration stipulation of the local unions, this decision concerns: "The unloading, moving, handling, placing, erecting, assembling, adjusting, aligning, and leveling of all machinery and machine parts affecting Millwrights Local 1102 and Riggers Local 575."

4. This decision shall have no application to nor effect upon conveyor installations which are covered by an agreement between the two International Unions.

5. This decision shall be effective on July 1, 1957, and shall apply both to new work starting on or after that date and also to work then in process.

Power Equipment

6. For the purposes of this decision, power equipment shall be defined to include such equipment as cranes, mechanical powered booms, overhead cranes, tractors, winch trucks, fork lift trucks, and A frame trucks.

Unloading and Handling with Power Equipment

7. The unloading and handling from railroad cars or from the point of receiving or storage to the approximate position for the installation or assembly of machines is the work of Riggers. The Riggers shall remove blocking and bracing on railroad cars or in storage necessary for the unloading and handling of the machines. The approximate position shall be designated by the contractor.

Decision

May 27, 1957

Uncrating

8. The removal of crating, blocking and bracing above the machine skid, the opening of boxes of parts, and the removal of protective covering is the work of Millwrights. (Picture No. 1)

Anchor Bolts

9. The laying out, drilling and installation of anchor bolts and nuts, and the cleaning and dressing of machined surfaces and component parts is the work of Millwrights.

Package Machines

10. The setting of package machines shall be performed as follows:

(a) The removal of the machine skids and the placing of the package machine over prepared anchor bolts with power equipment is the work of Riggers. If power equipment is used to place the package machine to the center line in order to mark the anchor bolts and to make subsequent moves of the package machine with power equipment, these operations are the work of Riggers. (Picture No. 2)

(b) The bolting, aligning and leveling of package machines is the work of Millwrights. The dressing and installation of small parts of package machines is the work of Millwrights. (Picture No. 3)

Assembly of Non-Package Machines

11. There shall be no limitations on the use of tools or equipment. The contractor shall have final authority to designate the method and the equipment or tools to be used.

12. The assembly of non-package machines shall be performed as follows:

(a) The handling of component parts of machines where power equipment is used is the work of Riggers. The bolting shall be performed in accordance with paragraph 13 below.

(b) The handling of component parts of machines by hand is the work of Millwrights. The bolting shall be performed by Millwrights.

Decision

May 27, 1957

(c) The use of chainfalls in the assembly of non-package machines has become less and less frequent in recent years. In order to conform more to national practice, the use of chainfalls in the assembly of non-package machines is the work of Millwrights, except that in the assembly of heavy presses (such as shown in Picture No. 7) and similar heavy machine tools, the use of chainfalls is the work of Riggers.

13. The bolting of component parts of machines assembled with power equipment shall be determined on the principles of safety, ideally with the two trades working together. In view of past difficulties, bolting shall be performed as follows in the assembly of machines involving the use of power equipment:

(a) On a horizontal surface the Riggers shall install two bolts. The Millwrights shall install the remainder. (Picture No. 4)

(b) On a vertical or inclined surface the Riggers shall install one half the bolts, but not less than two bolts. The Millwrights shall install the remainder. (Picture No. 5)

(c) On a part suspended from a surface, the Riggers shall install all bolts. (Picture No. 6)

(d) Bolts or tie-rods installed by power equipment, as on large presses, shall be installed by Riggers. (Picture No. 7)

(e) The final tightening, adjusting, leveling and aligning shall be performed by Millwrights.

Aligning and Leveling

14. The aligning and leveling of machines, including the use of jacks and chainfalls, in the aligning and leveling operation, shall be the work of Millwrights. If power equipment is used in aligning and leveling, the Riggers shall hook on the power equipment.

Dismantling for Relocation or Storage

15. The dismantling of machines involving the use of power equipment, including the removal of bolts, is the work of Riggers. The dismantling of small parts of package machines and the removal of all anchor bolts or nuts is the work of Millwrights; the removal and moving of package machines by power equipment is the work of Riggers.

Decision

May 27, 1957

Procedures

16. In the event that a jurisdictional dispute arises over the application of this decision, the contractor shall assign work in accordance with the decision, and both local unions shall work in accordance with the assignment. Both local unions shall remain at work and seek to adjust the dispute directly. In the event they are unable to adjust the dispute, a full report of the dispute, including pictures of the disputed operations, shall be forwarded by each local union to its respective International President for final settlement.

/s/ John T. Dunlop
Arbitrator

In accordance with the local agreement to arbitrate dated March 28, 1955, and the agreement and instructions of the two General Presidents dated February 2, 1956, and May 31, 1956, the officers and members of Millwright Local 1102 and Riggers Local 575 are directed to place into effect and comply fully with the above decision. The jurisdictional controversies of the past between the two local unions shall be replaced by a mutually constructive and cooperative relationship.

/s/ J. H. Lyons, General President
International Association of Bridge
Structural and Ornamental Iron
Workers

/s/ M. A. Hutcheson, General President
United Brotherhood of Carpenters and
Joiners

The officers and members of Millwrights Local 1102 and Riggers Local 575 agree to comply with the above instructions and decision.

/s/ Paul C. Allen

/s/ L. M. Weir

Millwrights' Exhibit 1

CARPENTERS DISTRICT COUNCIL
UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA, A.F.L.
Detroit, Wayne, Oakland, St. Clair,
Sanilac Counties and Vicinities

* * *

[Emblem]

* * *

2988 East Grand Blvd., Detroit 2, Michigan

August 2, 1956.

Mr. John T. Dunlop, Chairman
National Joint Board,
815 Sixteenth St. N.W.
Washington, D. C.

Dear Sir:

In reply to your telegram received today, please be informed nineteen counties, and parts of two others, constitute the territorial jurisdiction of Local 1102.

The names of the counties are as follows:

BAY	MIDLAND
HURON	GRATIOT
TUSCOLA	LIVINGSTON
SANILAC	INGHAM
GENESEE	IOSCO
SAGINAW	OGEMAW
LA PEER	MONROE
ST. CLAIR	CLINTON
MACOMB	EATON, parts of
WAYNE	ISABELLA, parts of
OAKLAND	

We hope this information will assist you.

Very truly yours,

/s/ L. M. Weir
Secretary
CARPENTERS' DISTRICT
COUNCIL

LMW by

Millwrights' Exhibit 1

* * * Office, 3711 Fenkell * * *

RIGGERS AND MACHINERY ERECTORS LOCAL UNION No. 575
Of The
International Association of Bridge, Structural
And Ornamental Iron Workers
Affiliated With Building Trade Councils of
American Federation of Labor

August 14, 1956

Mr. John T. Dunlop, Chairman
National Joint Board for Settlement
of Jurisdictional Disputes
815 Sixteenth Street, N.W.
Washington 6, D.C.

Dear Mr. Dunlop:

In reply to your communication of August 11th, please be advised that Riggers Local Union No. 575 has jurisdiction over thirty-seven (37) counties in the State of Michigan namely,

Alcona	Crawford	Lapeer	Ogemaw
Alpena	Genesee	Livingston	Oscoda
Arenac	Gratiot	Luce	Otsego
Bay	Huron	Mackinaw	Presque Isle
Cheboygan	Ingham	Macomb	Roscommon
Chippewa	Iosco	Midland	Saginaw
Clare	Isabella	Montmorency	Sanilac
Clinton	Jackson	Oakland	Shiawassee
St. Clair	Tuscola	Washtenaw	Wayne
Gladwin.			

These counties are outlined on the map I previously sent to you.

With kindest regards, I am

Very truly yours,
RIGGERS' LOCAL UNION NO. 575

/s/ Paul C. Allen
Business Mgr.

PCA:R
OEIU-10
A.F.L.

269
Organized February 10, 1908

QBT
3

CONSTITUTION of the Building and Construction Trades Department

1962

Amended December, 1961

General Offices
815 16th St., N.W.
Washington 6, D. C.



ment on February 10, 1908, at which time the Department Constitution and By-Laws was adopted.

The Building Trades Department, pursuant to Convention action of November 12-13, 1936, petitioned the Executive Council of the A. F. of L. to approve a change in its name to "Building and Construction Trades Department." The Executive Council of the A. F. of L. approved this request on February 18, 1937, and a revised charter was issued to the Building and Construction Trades Department under date of April 9, 1937.

Mindful of and grateful for the fine traditions of our past, and in recognition of the sincere efforts of our predecessors, and to give continuity and perpetuity to our charters, history, records, agreements of record, decisions and previous Constitutional rights, we do herewith carry forward, adopt and give full recognition to all previous A. F. of L. Executive Council and Convention actions and decisions, Building and Construction Trades Department Executive Council and Convention actions and decisions, and all official decisions, rulings and agreements of record, decisions of referees and jurisdictional

2

boards, including all rights derived from the charter grants and from previous Constitutional provisions regarding jurisdiction and other matters as presently recognized by the Building and Construction Trades Department.

Being grateful for the fine traditions of the past, we are confident of meeting the challenge of the future, and with this as our premise, we proclaim this Constitution.

ARTICLE I

Name and Jurisdiction

Section 1. This organization shall be known as the Building and Construction Trades Department of the American Federation of Labor—Congress of Industrial Organizations.

Section 2. This organization shall be composed of National and International building and construction trades unions, historically organized as such, and which are primarily and customarily, or historically, engaged or operating in the building and construction trades industry and all branches, divisions and subdivisions thereof.

3

or not the applicant is one whose membership is composed of tradesmen or craftsmen primarily and customarily, or historically, engaged in the building and construction industry.

Unless the applicant is found to be primarily and customarily, or historically, engaged in the building and construction industry, the Executive Council and the Convention must deny the application on the basis that the applicant is not considered "appropriate" for affiliation with the Building and Construction Trades Department.

ARTICLE X

Jurisdictional Disputes

All jurisdictional disputes between or among affiliated National and International Unions and their affiliated Local Unions and employers shall be settled and adjusted according to the present plan established by the Building and Construction Trades Department, or any other plan or method of procedure adopted in the future by the Department for the settlement of jurisdictional disputes. Said present plan or any other plan adopted in the future

shall be recognized as final and binding upon the Department and upon all affiliated National or International Unions and their affiliated Local Unions.

ARTICLE XI

Exhaustion of Remedies and Appeals

Section 1. No affiliated National or International Union or local affiliate thereof, Local or State Building and Construction Trades Council shall, as to any matter within the jurisdiction of the Department, resort to court proceedings against the Department or any affiliated National or International Union or any local affiliate thereof, without first exhausting internal remedies within the structure of this Department. Affiliated National and International Unions, and Local and State Building and Construction Trades Councils shall adhere to the following procedure:

- A. Appeals from any action of any State or Local Building and Construction Trades Council may be made to the President of the Department.
- B. Appeals from any decision of the President of the Department may

BRIEF FOR PETITIONER
(DON CARTAGE, *et al*)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JOHN QUINN AND RIGGERS AND
MACHINERY ERECTORS, LOCAL
575,
Petitioners,
vs.

No. 19,673

NATIONAL LABOR RELATIONS
BOARD,
Respondent.

DON CARTAGE COMPANY, a Michigan
corporation, and MICHIGAN
CARTAGEMEN'S ASSOCIATION,
HEAVY HAULERS' DIVISION,
Petitioners,
vs.

No. 19,686

NATIONAL LABOR RELATIONS
BOARD,
Respondent.

PETITION FOR RELIEF OF DECISION
AND ORDER OF NATIONAL LABOR
RELATIONS BOARD

United States Court of Appeals

for the District of Columbia Circuit

GEORGE T. ROUMELL, JR.

Attorney for Petitioners

Don Cartage Company and
Michigan Cartagmen's Association,
Heavy Haulers' Division

3400 Penobscot Building
Detroit, Michigan 48226
962-8710 Area Code: 313

FILED JAN 6 1960

Nathan J. Paulson
CLERK

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b

**BRIEF FOR PETITIONER
(DON CARTAGE, et al)**

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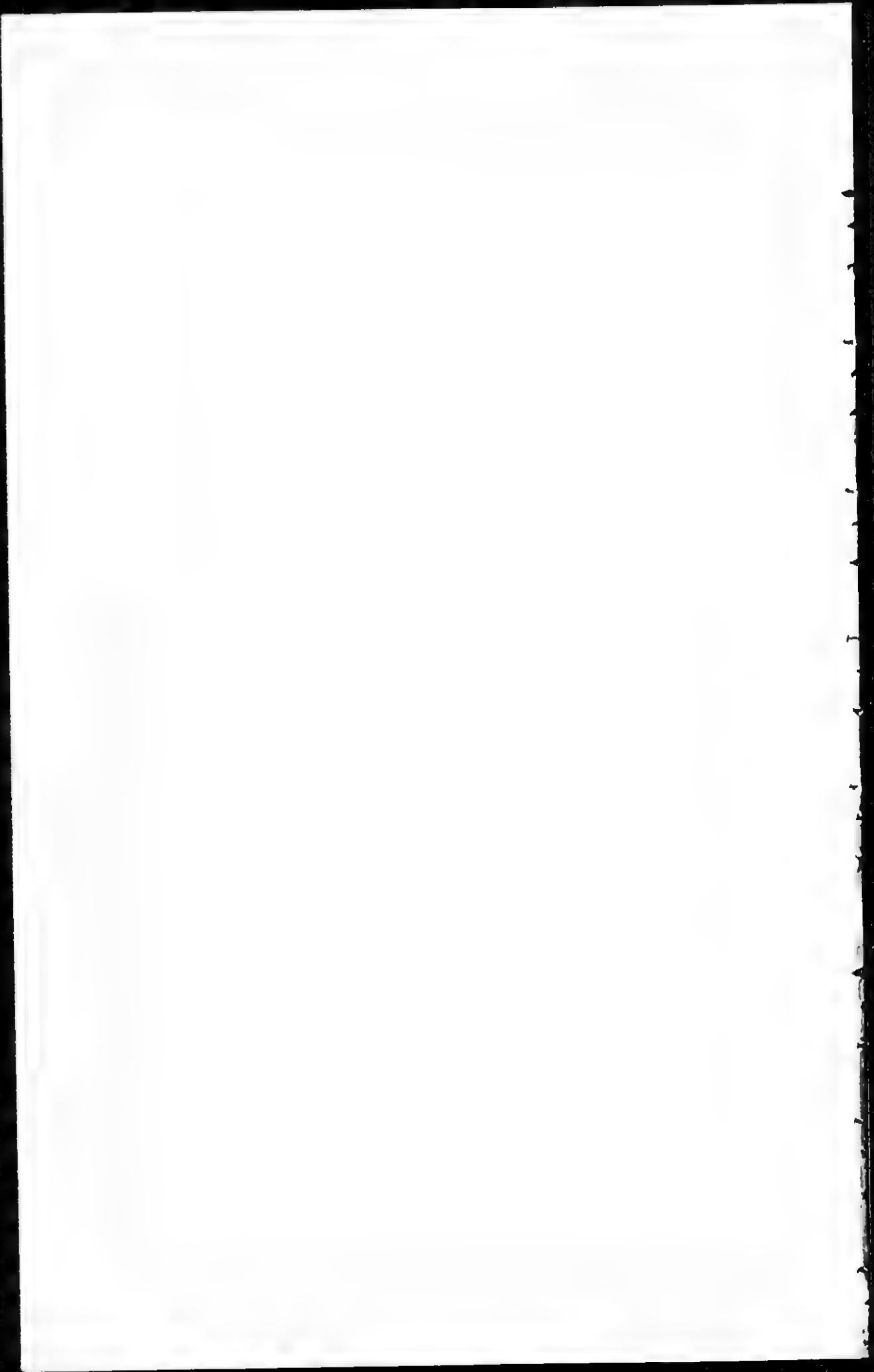
Attorney for Petitioners

Don Cartage Company and
Michigan Cartagemen's Association,
Heavy Haulers' Division

3400 Penobscot Building
Detroit, Michigan 48226
962-8710 Area Code: 313

FILED JAN 6 1966

Nathan J. Paulson
CLERK



STATEMENT OF QUESTIONS PRESENTED

I

Can the NLRB, contrary to the mandate of Congress set forth in Section 10(k) of the National Labor Relations Act as specifically established by legislative history and defined by the Supreme Court of the United States, followed an *ex parte* alleged settlement agreement procedure in considering a jurisdictional dispute lawfully submitted to it which resulted in no determination of the dispute?

II

Can the NLRB, which, pursuant to the direction of the Supreme Court of the United States, adopted certain policies designed to determine jurisdictional disputes, refuse to apply these policies to the case at bar when in fact it applied these policies to other cases immediately before and immediately after considering the case at bar?

III

Is it consistent with fair play and justice, particularly after all the parties have agreed on the record to submit this dispute to the Board, for the Board to refuse to decide the jurisdictional dispute lawfully submitted to it, particularly after the parties engaged in a 34 day hearing, developed a 3900 page record and filed extensive briefs and spent time, money and effort to make all facts available to the Board so it could make a jurisdictional determination?

IV

Can the Board enter into an *ex parte* alleged settlement of a jurisdictional dispute over the vigorous protests of the interested Employers and one of the two interested Unions when such an agreement is not provided by Board rules, Board procedures and law and the alleged settlement does not determine the dispute as it is a continuing one, present to this very day?

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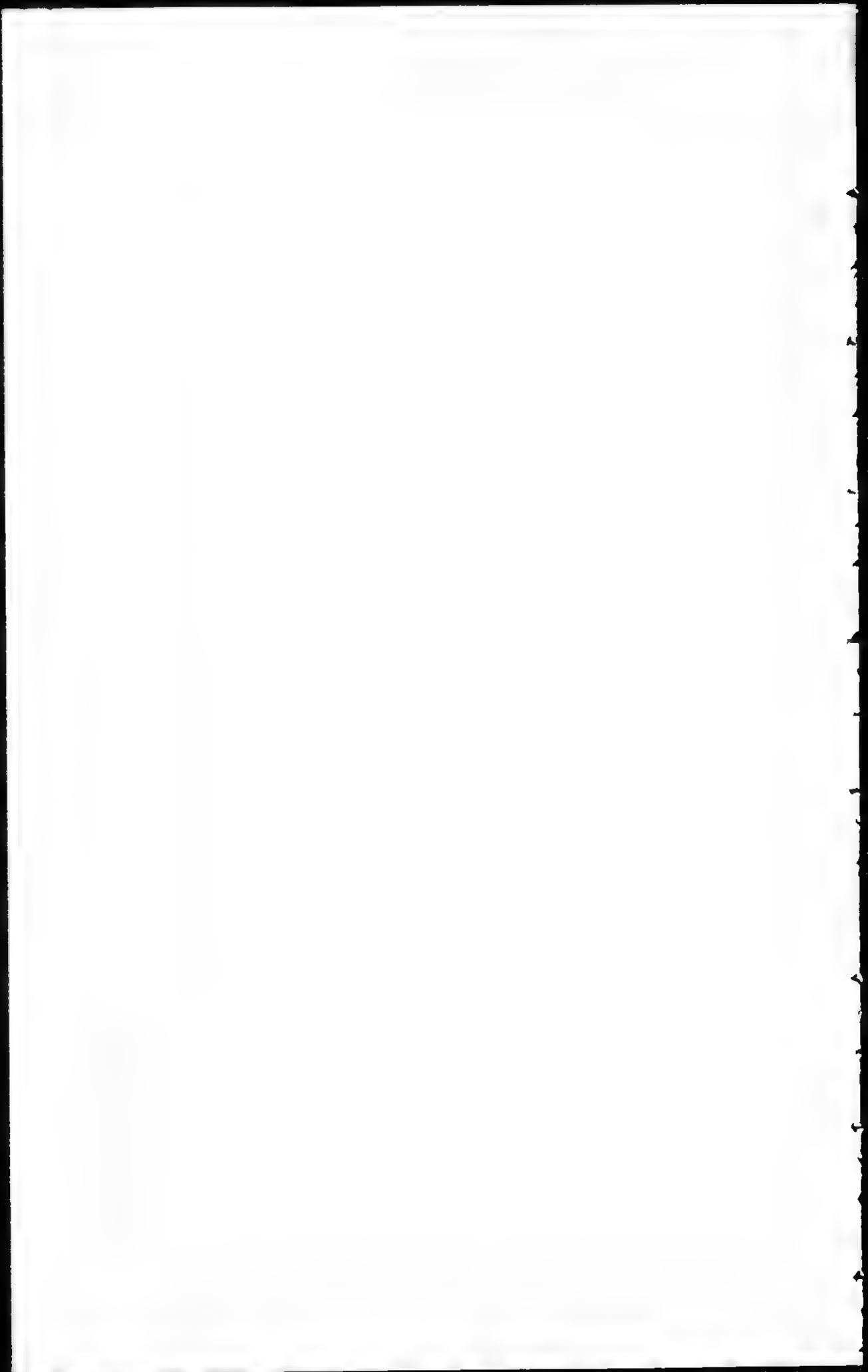
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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

JOHN QUINN AND RIGGERS AND
MACHINERY ERECTORS, LOCAL
575.

Petitioners,

vs.

No. 19,673

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

DON CARTAGE COMPANY, a Michigan corporation, and MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS' DIVISION,

Petitioners,

vs.

No. 19,686

NATIONAL LABOR RELATIONS
BOARD,

Respondent.

PETITIONERS' DON CARTAGE COMPANY
AND
MICHIGAN CARTAGEMEN'S ASSOCIATION
BRIEF IN SUPPORT OF PETITION FOR
REVIEW OF DECISION

JURISDICTIONAL STATEMENT

1. THE INITIAL UNFAIR LABOR PRACTICE CHARGES

In February and March, 1964, Don Cartage Company of Detroit, a Specialty Rigging Contractor, had a contract for the moving, installation, erection, placing, assembling and dismantling of machinery at General Motors' Ternstedt plant, Schaefer and West Chicago Boulevard, Detroit. This contract with General Motors was in excess of \$440,000.00.

On March 3, 1964, Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (hereinafter called "Millwrights Local 1102"), picketed the Ternstedt job sit to force Don Cartage to assign the work covered by its contract to Millwrights, members of Millwrights Local 1102. Don Cartage had assigned the work to Riggers, members of Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, AFL-CIO, (hereinafter called "Riggers Local 575") with whom Don Cartage had a collective bargaining contract.

Millwrights Local 1102's picket line was also sanctioned and honored by the Carpenters' District Council of Detroit, Wayne and Oakland Counties and vicinities, United Carpenters and Joiners of America, AFL-CIO (hereinafter called "Carpenters' District Council") and the Detroit and Wayne County, Oakland and Macomb County, Michigan Building and Construction Trades Council (hereinafter called "Building Trades Council").

On March 4, 1964, the day following the establishment of the picket line by Millwrights Local 1102, Don Cartage filed an unfair labor practice charge against said Millwrights

Local 1102 alleging a violation of Section 8(b) (4) (D) of the National Labor Relations Act as amended,¹ in that the aforementioned jurisdictional picket line was illegal as it was an attempt to force the employer to reassign disputed work.

On the same day, March 4, 1964, Don Cartage filed an identical charge against Carpenters' District Council and John Quinn, as an individual member of Riggers Local 575, filed a similar charge against Millwrights Local 1102, the Carpenters' District Council and the Detroit Building Trades Council.

Following the filing of the aforementioned charges, the Acting Regional Director of the Seventh Region of the National Labor Relations Board in Detroit on April 10, 1964, filed a Petition for Injunction in accordance with Section 10(1) of the National Labor Relations Act as amended², with the Honorable Judges of the United States District Court for the Eastern District of Michigan directed to Millwrights Local 1102, the Carpenters' District Council, and the Building Trades Council, to prevent future illegal jurisdictional picketing.

Millwright's Local 1102, the Carpenters' District Council and the Building Trades Council entered into a stipulation for an injunction, consistent with Board policies and procedures, thereby avoiding District Court litigation. (See Board Exhibits 1(a) through 1(w).)

1. 49 Stat. 452 (1935) as amended by 61 Stat. 140 (1947); 65 Stat. 601 (1951); Title 29 USC 158 (b) (4) (D), of which the relevant parts are printed in the Section marked "Statutes Involved" herein at Page 26.

2. 48 Stat. 923 (1934) as amended by 49 Stat. 453, 1921 (935-6); 62 Stat. 991 (1947); 72 Stat. 945 (1958); 73 Stat. 544 (1959); better known as Title 29 USC 160 (1).

2. THE 10(k) NOTICE AND HEARING

On April 9, 1964, the Acting Regional Director of the Seventh Region of the National Labor Relations Board sent all the parties a Notice of Hearing setting a hearing date for April 22, 1964, which later, at the request of Millwrights Local 1102 was adjourned to April 29, 1964. This Notice of Hearing was sent pursuant to Section 10(k) of the National Labor Relations Act as amended³, and is commonly known as a 10(k) Notice, which Section is set forth in full herein at page 26 under the section entitled Statutes and Rules Involved.

Unlike the usual unfair labor practice charge, if the gravamen of the charge is a jurisdictional dispute, the Board does not issue a complaint and set a hearing before a trial examiner, but instead, following the mandate of Section 10(k) above, sets a hearing before a hearing officer in which the parties present evidence through their own counsel as to which group of employees should do the assigned work. Thereafter, pursuant to the mandate of 10(k), the Board is to make an assignment. This was the procedure being followed here.

On April 15, 1964, the Michigan Cartagemen's Association, Heavy Haulers' Division (hereinafter called "the Association") filed a Petition to Intervene in the aforementioned 10(k) proceedings pursuant to Section 102.24 of the Board's rules. This petition pointed out that the Association represented ten Michigan-based Specialty Rigging Contractors who are the nub of the Specialty Rigging industry in Michigan and who do by far the majority of the

3. 48 Stat. 923 (1934) as amended by 49 Stat. 453, 1921 (953-6); 62 Stat. 991 (1947); 72 Stat. 945 (1958); 73 Stat. 544 (1959); better known as Title 29 USC 160 (k).

work in that industry, the industry being comprised of those who move, install, erect, place, line, assemble and dismantle machinery and equipment.

In addition, the Association's Petition to Intervene sets forth that all ten members had collective bargaining agreements with Riggers Local 575 pursuant to a certification by the National Labor Relations Board of that union, which contracts were negotiated by the Association bargaining as one group; that from time to time in the past, Millwrights Local 1102 had made demands and threats upon members of the Association for the assignment of the disputed work but by the aforementioned contracts, the Association members had promised and did assign the disputed work to Riggers Local 575; that therefore all members of the Association were vitally interested in the Board's determination and award of this disputed work in the Michigan area. (See Board Exhibits 1(a) through 1(w) in which the Petition in full is found.)

On April 16, 1964, the Board granted the Petition of the Association to intervene. (See Board Exhibits 1(a) through 1(w).)

The 10(k) hearing formally opened on April 30, 1964. Don Cartage and the intervening Association presented their case first, followed by Millwrights Local 1102, the Carpenters' District Council, the Detroit Building Trades Council, Riggers Local 575 member Mr. John Quinn, and Riggers Local 575 in that order.

The 10(k) Notice of Hearing read in part as follows:

"At said hearing, the parties will have the right to appear in person or otherwise and give testimony.

"The dispute concerns the assignment of the following work tasks: Lining, leveling, and anchoring of machinery and equipment, which work has been assigned to employees who are members of, or represented by, Riggers and Machinery Erectors, Machinery Movers Local Union No. 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO, and who are not members of, or represented by, Millwrights' Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, but which latter organization claims jurisdiction over said work." (See Board Exhibits 1(a) through 1(w).)

3. THE AGREEMENT TO EXTEND THE SCOPE OF THE WORK IN DISPUTE AND THE GEOGRAPHICAL AREA INVOLVED.

During the second day of the hearing all parties agreed that the scope of the hearing should be extended beyond the 10(k) Notice set forth above, both as to the geography and the nature of the work in dispute. (Tr. 60-64)

The parties agreed that the dispute extended beyond the Ternstedt Detroit plant to the thirty four counties in the State of Michigan within the jurisdiction of Riggers Local 575 and the nineteen Michigan counties within Millwrights Local 1102's jurisdiction (See D.C. Ex. 13, 19; stipulation at Tr. 911-2, 752, 753, Millwrights Ex. 1.)

The parties agreed that the scope of the disputed work assigned which was in dispute would be broadened as

basically set forth in the opening statement of counsel for the Millwrights reported at Tr. 41 and 42, who said in effect that the work in dispute would include the packaging, moving, installing, erection, placing, assembling, setting, aligning, lining and leveling of machinery and equipment. Though not mentioned in Millwrights' counsel's opening statement, the dismantling of machinery was also included within the scope of the disputed work (Tr. 3685-95, 3719).

The parties also agreed at Tr. 60 through 64 that the award of the assignment of the disputed work by the Board should not be confined to the Ternstedt Plant site in Detroit but should apply to all similar future work in Michigan where Riggers Local 575 and Millwrights Local 1102 may be found operating in conjunction with one another.

The Hearing Officer on at least two occasions recognized that the scope of the hearing had been expanded to include the extended geographical area and the broadened definition of the work in dispute as set forth immediately above (Tr. 971-2, 2054).) The scope of the work as expanded and explained by counsel for the Millwrights coincided with the actual demands made by Millwrights' Business Agents on Don Cartage Company at the Detroit Ternstedt Plant and had previously been made on Don Cartage Company and other employer members of the Association elsewhere in the Michigan area. (e.g. Tr. 2288, 2315).

The hearing ended on July 31, 1964 after thirty four hearing days over a period of some three months. The record consists of 3,986 pages.

4. THE SEVEN MONTH WAIT AND THE EX PARTE ALLEGED SETTLEMENT AGREEMENT.

Some seven months later, Millwrights Local 1102 and its allied unions, Carpenters' District Council and Detroit Building Trades Council in May, 1965, entered into an *ex parte* alleged settlement agreement with the Acting Regional Director of the Seventh Region of the National Labor Relations Board. The alleged settlement agreement is set forth in full in the Joint Appendix.

Though the *ex parte* alleged settlement agreement provided for signatures for Riggers Local 575, Don Cartage Company and the Michigan Cartagemen's Association, all three refused to sign same and objected to the settlement agreement on the basis that it settled absolutely nothing and was contrary to the agreement made by all parties on this Record and was contrary to Section 10(k) of the Act as defined by the United States Supreme Court.

5. THE ORDER TO SHOW CAUSE AND THE OBJECTIONS TO THE ALLEGED SETTLEMENT AGREEMENT.

On May 28, 1965, the National Labor Relations Board issue a Notice to Show Cause directed to Don Cartage, the Association, Riggers Local 575 and John Quinn to show cause "Why the Board should not approve the settlement agreement and issue a Decision and Order Quashing the Notice of Hearing".

In response to said Notice, Don Cartage, the Association, John Quinn and Riggers Local 575 filed vigorous objections to the *ex parte* alleged settlement agreement. The Employers' twelve precise objections to the *ex parte* alleged settlement agreement are printed in full in the Joint Appendix.

Basically, the Employers as well as John Quinn and Riggers Local 575 objected to the *ex parte* alleged settlement because it was contrary to the agreement of the parties set forth in the Record in this case, and it was contrary to the Board's duties to make an affirmative award of the disputed work as set forth in Section 10(k) of the National Labor Relations Act as amended and as required by the United States Supreme Court in what is known as the *CBS* case (*NLRB vs. Radio and Television Broadcast Engineers Union, Local 1212, IBEW*, 364 US 573 (1961)).

In addition, the objections also emphasized that the *ex parte* alleged settlement agreement ignores the fact that the dispute involved is a continuing one, and that as a result, such an agreement would encourage labor war rather than labor peace; that an award of the disputed work would bring labor peace; that the *ex parte* alleged settlement agreement is against public policy, for to entertain it after all litigation is completed over objections of the principal parties is rank injustice because of the time, effort and monies expended by all parties attempting to obtain a Board jurisdictional award which should have been forthcoming pursuant to Section 10(k) and the mandate of the Supreme Court.

6. THE BOARD'S DECISION AND ORDER

On August 16, 1965, over the vigorous dissent of Board member Howard Jenkins, Jr., the National Labor Relations Board rendered a Decision and Order approving settlement agreement and quashing notice of hearing. Said decision will be printed in the Joint Appendix and is reported at 154 NLRB No. 45.

7: THE EMPLOYERS' PETITION FOR REVIEW

Thereafter, on or about September 8, 1965, Don Cartage Company and the Association filed a Petition to review the aforementioned Decision and Order of the National Labor Relations Board with this Honorable Court. The Petition for Review was filed pursuant to Section 10(f) of the National Labor Relations Act as amended⁴ and the Administrative Procedure Act, particularly Section 9 thereof.⁵ Section 10(f) is as follows:

"Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals in the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in Section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a de-

4. 48 Stat. 923 (1934) as amended by 49 Stat. 453, 1921 (453-6); 62 Stat. 991 (1947); 72 Stat. 945 (1958); 73 Stat. 544 (1959), better known as Title 29 USC 160(f).

5. 60 Stat. 243 (1946), Title 5 USC Section 1009.

cree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive."

Specifically, the Employers' reviewing petition is entitled "Petition to Set Aside Order of the National Labor Relations Board and for Direction by the Court to Board that Board render Decision and Order in Accordance with National Labor Relations Act as amended." The Petition itself is set forth in the Joint Appendix. The gist of the Petition is set forth in paragraphs 3 and 4 thereof, which are as follows:

"3. That the aforementioned Order of the Board approving the ex-parte alleged settlement agreement and quashing the notice of hearing sent pursuant to Section 10(k) of the Act as amended is illegal and highly irregular as same is contrary to the mandate of Congress expressed in Section 10(k) of the Act as interpreted by the Supreme Court of the United States in *NLRB vs. Radio and Television Broadcast (sic) Engineers Union Local 1212*, 364 US 573 (1961), (hereinafter referred to as CBS case), and in particular the Order of the Board is illegal and irregular because:

A. The Order of the Board does not assign the disputed work as required by Section 10(k) as interpreted by the Supreme Court in the CBS case.

B. The Order of the Board is contrary to the agreement on the record in this case made by the

counsel for all parties for a determination of the disputed work involved in a given geographical area of Michigan.

C. That the Board by its own admission based its Decision and Order on ex-parte procedures not joined in by your petitioners, a charging party, John Quinn, an individual and charging party and Riggers Local 575, a union in interest.

D. That the Order is based, by the Board's own admission, on matters not part of this record and on procedures which the petitioners, John Quinn or Riggers Local 575, have never agreed to be a party to, as the Board in its Decision admitted.

4. That because of the illegal and irregular actions of the Board as set forth in paragraph 3 above, this Court should set aside the aforementioned Order of the Board and remand this matter to the Board with directions to make a determination and assignment of the disputed work as required by Section 10(k) of the Act as interpreted by the Supreme Court in CBS and as required by the agreement on the record in this case between the counsel for all parties herein involved that a determination of the disputed work in a given geographical area of Michigan be made by the Board."

Following Paragraphs 3 and 4, the petitioning Employers pray as follows:

"WHEREFORE, petitioners pray this Honorable Court that it cause notice of the filing of this petition and request for filing of transcript and entire record

to be served upon respondent, and that this Court take jurisdiction of the proceedings and of the questions determined therein and make and enter an Order setting aside the Order of the Board and directing the Board to make a determination and assignment of the work in dispute in this matter in accordance with Section 10(k) of the Act as interpreted by the Supreme Court of the United States and in accordance with the agreement on the record in this case made by counsel for all parties herein that the Board make a determination of the assignment of the disputed work involved in a given geographical area of Michigan."

Subsequently, because the National Labor Relations Board has by its Decision and Order herein defied the directive of Congress as set forth in Section 10(k) of the National Labor Relations Act as amended and the mandate of the Supreme Court of the United States thereby making this a case of extreme importance, the Employers have petitioned for a Hearing *in Banc* pursuant to Section 46(c) of Title 28 of the United States Code (62 Stat 871 (1948)).

Based on the above statements of fact and the statutory provisions cited herein, this Court has jurisdiction to entertain the Employers' Petition for Review and to grant the relief sought thereby.

STATEMENT OF THE CASE

1. THE ELEVEN EMPLOYERS AND MICHIGAN'S SPECIALTY RIGGING INDUSTRY.

Don Cartage Company is a Michigan corporation based in Detroit (Tr. 223-24) engaged in the Specialty Rigging business in Michigan which is the business of moving, dismantling, assembling, disassembling, erecting, placing and

installing machinery and equipment, which work is claimed by both Riggers Local 575 and Millwrights Local 1120. The intervening Association is an association of eleven (ten at the time of the Hearing, but now one additional member has joined, to wit, Dobson Heavy Haul, Inc. of Bay City, Michigan) Michigan based Specialty Rigging Contractors, including Don Cartage Company, who are engaged in the Specialty Rigging Industry, primarily in Michigan, which means they too are engaged in moving, dismantling, assembling, disassembling, erecting, placing and installing machinery and equipment (Tr. 1162, 1172).

The Employer members of the Association do 90% of the Specialty Rigging Contracting in the Michigan area. (Tr. 712, 897, 1063). Even the attorney for Millwrights Local 1102 in this Record admitted at page 1795 that the (then ten) Association Employers were a "sizeable portion of an (the) industry in this area (speaking of Michigan)".

2. THE CERTIFICATION OF AND THE EMPLOYERS' LONG USE OF RIGGERS.

On May 27, 1957, the National Labor Relations Board issued a decision and direction of election in Machinery Movers and Erectors Division, Michigan Cartagmen's Association, Riggers Local 575, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, 117 NLRB No. 33. Riggers Local 575 won the subsequently held election and was certified by the Board as the collective bargaining agent for Don Cartage and all other members of the Michigan Cartagmen's Association (Machinery Movers & Erectors Division, now known as Heavy Hauler's Division). The certification was introduced into this Record as Don Cartage's Exhibit 14. There is no certification of Millwrights Local 1102. In the decision direction of election, the Board found, as a matter of fact,

that the Association and its Employer members have a collective bargaining relationship with Riggers Local 575 going back at least to 1947, i.e., eighteen years.

Pursuant to the aforementioned certification and its previous history of collective bargaining agreements with Riggers Local 575, the Association on behalf of all its members, including Don Cartage, bargained for and entered into a collective bargaining agreement with Riggers Local 575 and is currently operating pursuant to such an agreement while negotiating a new agreement.

The Association Employers have consistently assigned the work claimed by Millwrights Local 1102 to Riggers, members of Riggers Local 575 in accordance with their collective bargaining contract. The Specialty Rigging Contractors are all geared to employ Riggers. A number of Employers testified that they have Riggers, members of Riggers Local 575, who have been with their organization continuously for over ten years and in many cases, over fifteen years (See Don Cartage Exhibits 18 and 20, Tr. 686, 1038-9).

Individual Special Rigging Contractors work loads require that employees are interchanged between Employer members of the Association. There are father and son teams working for the various Association members (Tr. 1043). The Association cooperates with Riggers Local 575 in an apprentice program. Members of the Association have built specialized tools for use by Riggers, members of Riggers Local 575 (Tr. 883). The Association Employers depend on the work and organization and skill of the Riggers to do the work involved efficiently and economically. (Tr. 708, 713, 1045-47, and 1053). This latter factor is

important because the labor cost factor constitutes a big element in preparing bids for the work that the Specialty Rigging Contractors obtain in Michigan. Labor is actually 80 to 99% of the estimate (e.g. Tr. 706, 886, 1036).

Many of the top management officials of the Specialty Rigging Contractors are former Riggers, members of Riggers Local 575. (Tr. 646, 680, 1038, 681). Even Robert Thompson, President of Detroit Riggers and Erectors, Inc., who is a former Millwright, made it clear on this record that he prefers to assign the disputed work to Riggers, members of Riggers Local 575 (Tr. 3019, 3023).

Members of the Association obtained their contracts by bidding, particularly with the automotive companies, for the moving, erecting, disassembling, assembling, installation and placement of machinery in connection with production changeover and the like (Tr. 1035). They compete, among others, with their own customer's plant maintenance department. They are successful in obtaining work because they are able to depend on the skill of their rigging work force to do their work efficiently and economically (e.g. Tr. 1045-47). The Employers have uniformly found that the use of Riggers is much more economical than the use of Millwrights.

3. PAST AND CURRENT CONTINUING RIGGER-MILLWRIGHT JURISDICTIONAL DISPUTE.

For a number of years, Millwrights Local 1102 and Riggers Local 575 have been engaged in a continuing jurisdictional dispute in the Michigan area over the work described in more detail above under caption "Jurisdictional Statement". On at least two occasions, pursuant to Section 10(k) of the National Labor Relations Act as amended, Association Employers have sought to have the National

Labor Relations Board make an assignment of the work and have engaged in long hearings. *Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO et al (General Riggers & Erectors, Inc.)* 127 NLRB 26 (1961); *Millwrights Local 1102 et al Don Cartage Company*) 121 NLRB 101 (1958). For various reasons, including the Board's refusal to follow the requirements of Section 10(k) and make an assignment of the work, the Board has never made an award of this disputed work on the merits.

On this very record, members of the Association testified, including R. Royce Richards, General Manager of Don Cartage Company, that on occasion in the past, their companies have been harrassed by picket lines and other means by the Millwrights Local 1102 to assign the disputed work to Millwrights, and on some occasions, some employers have succumbed to this pressure and hired millwrights in order to keep their contracts (Tr. 216, 1024-28, 319, 3553-54).

This jurisdictional dispute is a continuing one, even to the present day, leaving the Employer caught between the cross-fire of two competing unions, one of which, Riggers Local 575, has been certified by the National Labor Relations Board as the bargaining agents of the employers' employees. The continuance of the dispute is well-illustrated by the statement contained at page 7 of the Employers' Answer to the Board's Show Cause, which in part is as follows:

"Since the hearing ended in July 31, 1964, in the current case, the undersigned as attorney for the Michigan Cartagmen's Association, Heavy Haulers' Division, has received calls and inquiries from

at least 8 members of the Association on approximately the following dates concerning claims and pressures put upon them by Millwrights to attempt to get them to re-assign work already assigned to Riggers Local 575, covering jobs in Detroit, Pontiac, Flint, Midland and Saginaw, Michigan: International Industrial Contracting Corporation (August 10-12, 1964); General Riggers and Erectors, Inc., (November 24-27, 1964); Turner Cartage Company (November 30, 1964); Gale Rigging and Erecting, Inc., (November 24, 1964); Dobson Heavy Haul, Inc., (January and April, 1965); Don Cartage Company (May 26, 1965); Detroit Riggers and Erectors, Inc. (Fall of 1964); Thomas Goodfellow, Inc. (January 27, 1965, March 23, 1965, May 6, 1965, May 25, 1965, June 15 and 16, 1965).

These times are approximate and are based upon the time records of the undersigned. It is interesting to note that while preparing this Answer on Tuesday night, June 15, 1965, and at 8 o'clock in the morning on June 16, 1965, Thomas Goodfellow, Inc., reported to counsel that a picket line had been threatened against Thomas Goodfellow, Inc."

The above statement was written on approximately June 16, 1965. The Board's Decision was announced August 16, 1965. Since that date, counsel for the Association Employers, relying on time records, can emphatically state that he has been consulted by General Riggers and Erectors, Inc., concerning a jurisdictional demand made by Millwrights Local 1102 in October, 1965, and that on November 24 and December 6, 1965, he has filed on behalf of International Industrial Contracting Corporation and Gale Rigging & Erecting, Inc., two 8(b) (4) (D) charges with the National

Labor Relations Board, said charges being known as 7 CD-146 and 7-CC-326. Thus, it becomes quite clear that the harassment by Millwrights Local 1102 of the Employers continues to the present date.

The background and the continued disputes clearly explain why all the parties on this record at transcript pages 60-64 agreed that the Board's award should apply to all future work where these two unions work in conjunction with each other as this was a continuing jurisdictional dispute.

4. THE ILLEGAL MILLWRIGHT PICKETING.

Section 8(b) (4) (D) makes it an unfair labor practice for one union to picket a job site for the purpose of forcing an Employer to reassign work which he has already assigned to another group of employees. Instead of filing a Complaint and having a Hearing before a trial examiner, the Board in such jurisdictional disputes must issue a 10(k) Notice and make an award to one of the competing groups of employees of the disputed work. In other words, before the Board is empowered to make an award, a Union must commit an unfair labor practice within the meaning of Section 8(b)(4)(D). Obviously, Millwrights Local 1102 recognized this point for on March 3, 1964 the Millwrights set up a picket line at the Ternstedt Division Plant, General Motors Corporation, Schaefer and West Chicago Boulevard, Detroit. The pickets carried signs bearing the following legend:

"Don Cartage unfair to Millwrights Local 1102"
(Tr. 118).

This also explains, as already indicated herein, why all the parties agreed on this Record that they wanted an

award to cover the work in dispute in the entire Michigan area where Riggers Local 575 and Millwrights Local 1102 work in conjunction with each other.

The picket line was sanctioned, approved and honored by Carpenters' District Council and the Detroit Building Trades Council. Prior to the establishment of the picket line, representatives of both Millwrights Local 1102, Carpenters' District Council and the Detroit Building Trades Council had contacted representatives of Don Cartage Company claiming the work that Don Cartage was doing at the Ternstedt plant belonged to Millwrights, members of Local 1102 rather than to Riggers, members of Riggers Local 575 (Tr. 226-28, 111-13, 3254, 3587).

At the time of the picket line, Don Cartage was performing the disputed work for the Ternstedt Division of General Motors pursuant to a contract which was issued in the form of a purchase order and marked "Don Cartage Exhibits 9 and 10." The actual purchase orders provided that Don Cartage was "to load, transport, unload, position according to print, level, anchor, and install" machinery and equipment, by moving same from Ternstedt's main plant at 6307 West Fort Street to Ternstedt's Plant No. 9, 13881 West Chicago Boulevard, Detroit, Michigan (Tr. 66-68; D.C. Exhibits 9, 10). Don Cartage actually began working on the job site on February 10, 1964. By March 3, 1964, the purchase orders which had originally started out in the neighborhood of \$389,922.00 had reached a total of \$440,000.00 and because of additions that were expected, promised to eventually total higher than half a million dollars (Tr. 76-77).

Mr. John Blue, Vice President of Don Cartage Company and the top Don Cartage official on the job site, explained

that time was of the essence in this job and that he was operating on a tight schedule for the machinery being moved from one Ternstedt Plant to another Ternstedt Plant was used in automotive production. He further explained that the representatives of Ternstedt emphasized to him the time-scheduling problem (Tr. 79-81).

The Ternstedt job was a nine-stage operation, an advanced move and eight subsequent moves (105). Phase 1, the advanced move, was the move of the tools and wheel rooms and took Don Cartage from February 10 through February 29, 1964 (Tr. 89, 106). On March 2, 1964, Don Cartage began phase 2 which had to be completed in seven days. Don Cartage Exhibit 10 lists the phases of the move and sets forth in detail the critical timing involved in each move. The advanced move was a three week move, for as Mr. Blue explained, it did not involve production equipment (Tr. 89). The subsequent eight moves did involve production equipment and were to be made in seven day sequences.

Don Cartage assigned all the work involved to Riggers, members of Riggers Local 575, pursuant to its customary practice and its collective bargaining agreement with Riggers Local 575.

On March 3, 1965, when the picket line was established, it is quite clear that it was timed to hinder Don Cartage's ability to do Phase 2 of the moving operation which had to be done in seven days and which involved critical timing. As indicated above, the Carpenters' District Council and the Building Trades Council respected the picket line, which meant that after the picket line was established, no other craft or trade crossed the picket line or went to work on this job site. Thus, the job was shut down.

5. THE PRESSURE ON THE INNOCENT EMPLOYERS.

With the Building Trades off the job and the urgency of completing the work at the Ternstedt Plant No. 9 because of the need of those facilities for automobile production, it was quite obvious that as soon as Mr. John Blue reached the Ternstedt Plant, at 7:30 a.m., March 3, 1964, he would be contacted by a Ternstedt official, to wit, Plant Engineer, Jack Conture, who asked Blue to remove the picketing by 10:00 a.m. (Tr. 119-120). Indicative of the pressure that Mr. Conture was putting on Mr. Blue throughout the day was Mr. Blue's statement at 136:

“A. That was a continuous conversation all day with Conture. I had trouble getting to the telephone. He was right with me all of the time.”

After the first contact with Mr. Conture about 8 in the morning (Tr. 119), Mr. Blue contacted Mr. Royce Richards, General Manager of Don Cartage, (Tr. 127) by phone. This was one of many phone conversations which Mr. Blue had on March 3, 1964 with Mr. Richards concerning the dispute.

Mr. Richards tried to contact the Manager of the Michigan Cartaglemen's Association and an attorney to remedy the situation. All during the day Richards contacted the various union officials to discuss the problem (Tr. 229, 234, 241-42). In the meantime he made a decision to put some Millwrights on the job because he wanted to save the contract because “I had no other choice.” (Tr. 244-45). Mr. Beaudry, the Ternstedt Plant Manager, telephoned Richards during the day and advised him “of the situation” which had been caused by a tight timing schedule in the move from the main Ternstedt Plant to Plant No. 9. Beau-

dry advised Richards that General Motors did not want to lose one day on the contract because it had not included a one day loss in its production schedule (Tr. 245-46).

Richards advised Mr. Blue of the decision to hire Millwrights (Tr. 129). Blue subsequently had a meeting with Mr. George Horn and Mr. Charles Duncan, business agents of Millwrights Local 1102, about this situation and indicated that Don Cartage would hire some Millwrights. Mr. Horn then demanded that he would not furnish men unless Don Cartage signed a Millwright contract (Tr. 131-132). Blue and Horn then jointly had a phone conference with Richards, the effect of which was that Don Cartage refused to sign a Millwright contract (Tr. 132-134; 248). Richards suggested to Horn that Don Cartage would hire some Millwrights for the Ternstedt job and that the matter be discussed with the Michigan Cartagemen's Association (Tr. 248). This idea was rejected by Horn (Tr. 249).

6. THE TERMINATION OF DON CARTAGE'S CONTRACT.

Millwright 1102's picket line was effective, for Mr. Blue was called to Mr. Beaudry's office, the Ternstedt Manager, late in the afternoon of March 3, 1964, and advised that the contract of Don Cartage was terminated. The actual contract termination is exhibited by two telegrams from Ternstedt to Don Cartage (D.C. Ex. 11,12). This meant that Millwrights Local 1102 and its allies, the Carpenters' District Council and Detroit Building Trades Council was responsible for Don Cartage Company, a relatively small company, to lose an approximately half-million dollar contract. This certainly was a financial blow to Don Cartage Company.

Mr. Blue testified that there was no question that the termination of the contract was as a result of the picketing

activities of Millwrights Local 1102, the District Carpenters' Council and the Detroit Building Trades. Ternstedt officials had advised Blue that up to the time of the picket line they were pleased with Don Cartage's performance.

There was no question as to the purpose of the picket line for Mr. Richards did testify that in January, 1964, he received a phone call from Millwrights' Business Representative, George Horn, who, in effect, threatened a picket line if Millwrights were not assigned the work at Ternstedt.

7. TERNSTEDT SITE SYMPTOMATIC OF CONTINUING JURISDICTIONAL DISPUTE.

Actually the Ternstedt jurisdictional dispute is only symptomatic of the general jurisdictional dispute disease existing between Millwrights Local 1102 and Riggers Local 575 in the Michigan area. The detailed facts here illustrate the tremendous pressure the innocent Employer is put under by the activities of Millwrights Local 1102 and as previously explained members of the Association have succumbed to this pressure and have on occasion, contrary to their contract with Riggers Local 575, hired Millwrights in order to save their contracts with their respective customers. In this connection Don Cartage, one of the largest Specialty Rigging Contractors in Michigan, suffered an unusual lack of business for a number of months after the Ternstedt incident.

The continuing nature of this jurisdictional dispute has already been spelled out in this Statement of the Case. It is interesting, however, to notice that during the period of the very hearing in this case, on May 20, 1964, another Specialty Rigging Contractor, now a member of the Association, Dobson Heavy Haul, Inc., filed an unfair labor

practice charge against Millwrights Local 1102 for a similar type of tactic in Flint, Michigan. This was NLRB Case No. 7-CD-103. Because of the Hearing in the Don Cartage case and the expectation that the Don Cartage case would settle this jurisdictional dispute, the charge was withdrawn by Dobson Heavy Haul.

It is further noted that the Millwrights again picketed Dobson Heavy Haul in January, 1965 at the Chevrolet Division of the General Motors Corporation Plant at Bay City, Michigan and in doing so was attempting to have Dobson re-assign work from the Riggers to the Millwrights. As a result, an unfair labor practice charge was filed resulting in NLRB Case No. 7-CD-124 (2). The Millwrights did not contest the case but instead entered into a settlement agreement which was executed by the Employer, Riggers Local 575, as well as Millwrights Local 1102, whereby the Millwrights agreed not to picket Dobson Heavy Haul even though Dobson continued to assign the disputed work to Local 575 Riggers. The Employer's position was that he did not want to again engage in extensive litigation but was awaiting the outcome of the Don Cartage case. Millwrights clearly did not live up to the settlement agreement referred to in Case No. 7-CD-124(2), as the Millwrights subsequently engaged in picketing Dobson Heavy Haul.

It becomes quite obvious that the Don Cartage dispute at Ternstedt is one stop in a long series of continuing events. It was the vehicle by which the parties due to the statutory scheme, could obtain a 10(k) hearing and have the Board make a determination of this continuing Millwright-Rigger jurisdictional dispute, and thus bring labor peace to the Specialty Rigging Industry in Michigan.

STATUTES AND RULES INVOLVED

I

Section 8(b)(4)(D) of the National Labor Relations Act as amended (29 USC 158(b)(4)(D) (in part):

"(b) It shall be an unfair labor practice for a labor organization or its agents —

(4) (i) to engage in, or to induce or encourage any person engaged in commerce or in an industry affecting commerce to engage in, a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work . . .".

II

Section 10(k) of the National Labor Relations Act as amended (29USC 160(k) :

"(k) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b), the Board

is *empowered and directed to hear and determine* the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed." (Emphasis added)

III

Rule 102.93 of the National Labor Relations Board:

"*Alternative procedure* — If, either before or after service of the notice of hearing, *the parties* submit to the regional director satisfactory evidence that they have adjusted the dispute, the regional director shall dismiss the charge and shall withdraw the notice of hearing if notice has issued. If, either before or after issuance of notice of hearing, *the parties* submit to the regional director satisfactory evidence that they have agreed upon methods for the voluntary adjustment of the dispute, the regional director shall defer action upon the charge and shall withdraw notice of hearing if notice has issued. If it appears to the regional director that the dispute has not been adjusted in accordance with such agreed-upon methods and that an unfair labor practice within the meaning of section 8(b)(4)(D) of the act is occurring or has occurred, he may issue a complaint under section 102.15, and the procedure prescribed in sections 102.9 to 102.51, inclusive, shall, insofar as applicable, govern; and sections 102.90 to 102.92, inclusive, are inapplicable."⁶ (Emphasized)

IV

Section 101.34 of the Statement of Procedure presented by the National Labor Relations Board says as follows:

"If the parties have not adjusted the dispute or agreed upon methods of voluntary adjustment, a hearing, usually open to the public, is held before a hearing officer. The hearing is *non-adversary* in character, and the primary interest of the hearing officer is to insure that the record contains as full a statement of the pertinent facts as may be necessary for a determination of the issues by the Board. All parties are afforded full opportunity to present their respective positions and to produce evidence in support of their contentions. The parties are permitted to argue orally on the record before the hearing officer. At the close of the hearing, the case is transmitted to the Board *for decision*. The hearing officer prepares an analysis of the issues and the evidence, but makes no recommendations in regard to resolution of the dispute." (Italics added)

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6. The statement of procedure and the rules herein cited were published in the Federal Register on November 7, 1959. Amendments were issued by the Board and were published in the Federal Register and became effective on May 4, 1961 (26 F.R. 3885), on August 15, 1961 (26 F.R. 7546), on March 3, 1962 (27 F.R. 2091), August 15, 1961 (26 F.R. 7546), on March 3, 1962 (27 F.R. 2091), on June 1, 1962 (27 F.R. 5094), on September 3, 1963 (28 F.R. 7972), and on November 30, 1964 (29 F.R. 15918).

STATEMENT OF POINTS

I

The NLRB, contrary to the mandate of Congress set forth in Section 10(k) of the National Labor Relations Act as specifically established by legislative history and defined by the Supreme Court of the United States in the

CBS case, followed an *ex parte* alleged settlement agreement procedure in considering a jurisdictional dispute lawfully submitted to it which resulted in no determination of the dispute.

II

The NLRB, which, pursuant to the direction of the Supreme Court of the United States, adopted certain policies designed to determine jurisdictional disputes, cannot refuse to apply these policies to the case at bar when in fact it applied these policies to other cases immediately before and immediately after considering the case at bar.

III

It is not consistent with fair play and justice, particularly after all the parties have agreed on the record to submit the dispute to the Board, for the Board to refuse to decide this jurisdictional dispute lawfully submitted to it, particularly after the parties engaged in a 34 day hearing, developed a 3900 page record and filed extensive briefs and spent time, money and effort to make all facts available to the Board so it could make a jurisdictional determination.

IV

The Board cannot enter into an *ex parte* alleged settlement of a jurisdictional dispute over the vigorous protests of the interested Employers and one of the two interested Unions when such an agreement is not provided by Board rules and Board procedures and law and the alleged settlement does not determine the dispute as it is a continuing one, present to this very day.

SUMMARY OF ARGUMENT

I

THE NLRB, CONTRARY TO THE MANDATE OF CONGRESS SET FORTH IN SECTION 10(k) OF THE NATIONAL LABOR RELATIONS ACT AS SPECIFICALLY ESTABLISHED BY LEGISLATIVE HISTORY AND DEFINED BY THE SUPREME COURT OF THE UNITED STATES IN THE *CBC* CASE, FOLLOWED AN *EX PARTE* ALLEGED SETTLEMENT AGREEMENT PROCEDURE IN CONSIDERING A JURISDICTIONAL DISPUTE LAWFULLY SUBMITTED TO IT WHICH RESULTED IN NO DETERMINATION OF THE DISPUTE.

* * *

The words "the Board is empowered and *directed* to hear and *determine* the dispute" in Section 10(k) of the National Labor Relations Act as amended means just that. Nothing less. When a jurisdictional dispute is submitted to the Board, the Board must make a determination and award the disputed work to one of the two disputing groups of employees. Prior to 1961, the Board refused to follow the mandate set forth in Section 10(k) and refused to make determinations and awards in jurisdictional disputes despite the clear legislative intent that it should do so. However, in 1961 in the *CBS* decision, the Supreme Court made it crystal clear, as had the Second, Third and Seventh Circuits previously, that in jurisdictional disputes the Board has a duty to make a determination and award — that Section 10(k) in effect is compulsory arbitration. Here, the Board outrightly refused to follow *CBS*, but instead accepted an *ex parte* alleged settlement agreement over vigorous protests of the Employers and one union involved, which does not settle the dispute, for it is a continuing dispute. The gist of the Board's settlement Opinion is that the parties should use voluntary arbitration instead

of the compulsory arbitration that they are entitled to under Section 10(k). The Opinion of the dissenting Board member here requires compliance with 10(k) and *CBS* and should be followed.

II

THE NLRB, WHICH, PURSUANT TO THE DIRECTION OF THE SUPREME COURT OF THE UNITED STATES, ADOPTED CERTAIN POLICIES DESIGNED TO DETERMINE JURISDICTIONAL DISPUTES CANNOT REFUSE TO APPLY THESE POLICIES TO THE CASE AT BAR WHEN IN FACT IT APPLIED THESE POLICIES TO OTHER CASES IMMEDIATELY BEFORE AND IMMEDIATELY AFTER CONSIDERING THE CASE AT BAR.

Following *CBS*, the Board accepted the Supreme Court's mandate and began making determinations and awards in jurisdictional disputes. The Board established the policy that if the Employer had not agreed to submit the dispute to the Joint Board, he is not bound to do so, even though the Unions have so agreed. The Board also developed the policy that if the dispute is a continuing one, i.e., occurring at more than one job site, the Board will make an award covering all job sites in the geographical area involved. Up to the case at bar, the Board applied these policies. Following the case at bar, decided on August 16, 1965, the Board applied these policies to subsequent cases. However, the Board refused to apply these policies in the case at bar. Consistent with *CBS*, the Board must apply these policies and make a determination and award in the case at bar.

III

IT IS NOT CONSISTENT WITH FAIR PLAY AND JUSTICE, PARTICULARLY AFTER ALL THE PARTIES HAVE AGREED ON THE RECORD TO SUBMIT THE DISPUTE TO THE BOARD, FOR THE BOARD TO REFUSE TO DECIDE THIS JURISDICTIONAL DISPUTE LAWFULLY SUBMITTED TO IT, PARTICULARLY AFTER THE PARTIES ENGAGED IN A 34 DAY HEARING, DEVELOPED A 3900 PAGE RECORD AND FILED EXTENSIVE BRIEFS AND SPENT TIME, MONEY AND EFFORT TO MAKE ALL FACTS AVAILABLE TO THE BOARD SO IT COULD MAKE A JURISDICTIONAL DETERMINATION.

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Realizing the Board's responsibilities under Section 10(k), all the parties to this dispute agreed on the Record that the Board should make an award covering the geographical area involved. Based upon this agreement and the *CBS* case, the parties spent considerable effort, time and money in a 34 day hearing, and developed a 3900 page record so that the Board could have all the facts available to it to make a determination. Under these circumstances it is rank injustice and unfair for the Board not to make a determination and award.

IV

THE BOARD CANNOT ENTER INTO AN *EX PARTE* ALLEGED SETTLEMENT AGREEMENT OF A JURISDICTIONAL DISPUTE OVER THE VIGOROUS PROTESTS OF THE INTERESTED EMPLOYERS AND ONE OF THE INTERESTED UNIONS WHEN SUCH AN AGREEMENT IS NOT PROVIDED BY BOARD RULES, BOARD PROCEDURES AND LAW, AND THE ALLEGED SETTLEMENT DOES NOT DETERMINE THE DISPUTE AS IT IS A CONTINUING ONE, PRESENT TO THIS VERY DAY.

• • •

The Board's use of the device of an *ex parte* alleged settlement agreement herein is contrary to Board rules, procedures and law. This is not an unfair labor practice situation but a jurisdictional dispute problem under Section 10(k). The Board rules make it quite clear that settlements can only be accepted if all the parties agree, for this is compulsory arbitration. Even where the Courts have permitted settlement agreements over protest, the agreements were in unfair labor practice situations and were made prior to a hearing. Here, the 34 day hearing has been completed. There is no legal basis for this *ex parte* alleged settlement agreement.

ARGUMENT

I

THE NLRB, CONTRARY TO THE MANDATE OF CONGRESS SET FORTH IN SECTION 10(k) OF THE NATIONAL LABOR RELATIONS ACT AS SPECIFICALLY ESTABLISHED BY LEGISLATIVE HISTORY AND DEFINED BY THE SUPREME COURT OF THE UNITED STATES IN THE CBS CASE, FOLLOWED AN *EX PARTE* ALLEGED SETTLEMENT AGREEMENT PROCEDURE IN CONSIDERING A JURISDICTIONAL DISPUTE LAWFULLY SUBMITTED TO IT WHICH RESULTED IN NO DETERMINATION OF THE DISPUTE.

1. THIS IS A PROCEDURAL QUESTION.

The Jurisdictional Statement set forth beginning at page 1 no doubt is unusually long. But, as this review deals with a critical question of administrative procedure it is necessary to outline the procedures herein with great care.

Summarizing the procedure thus far, the Employer, Don Cartage, filed a charge against Millwrights Local 1102 pursuant to Section 8(b)(4)(D) alleging that the Millwrights had engaged in an illegal jurisdictional strike. The Board

issued a 10(k) Notice of Hearing. The hearing lasted over thirty-four days, and briefs were filed by Millwrights Local 1102, Riggers Local 575 and the Employers. Nine months following submission of briefs the Board accepted an *Ex Parte* settlement order, vigorously opposed by Riggers Local 575, John Quinn and the Employers, which did not "determine" the jurisdictional dispute.

Thus, we come to the gravamen of this entire case, namely, the meaning of Section 10(k) previously set forth in full at page 26 herein, and most particularly the words "the Board is empowered and *directed* to hear and *determine* the dispute." The Board's decision and order accepting the alleged *ex parte* Settlement Agreement, which was no determination of the jurisdictional dispute involved, is reported at *Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners AFL-CIO, et al, (Don Cartage Company)* 154 NLRB No. 45, and reproduced in full in the joint appendix.

2. DISSENTING OPINION CLEARLY APPLIES 10(k).

The obvious error in the Board's decision interpreting its duty under Section 10(k) can in no way be better explained than by the words of the vigorous dissent of Board member Howard Jenkins, Jr., who, at page 8 of the opinion began his dissent as follows:

"I would not approve the 'settlement agreement' as in my view its approval in the circumstances of this case is not only unfair to interested parties but in reality it settles nothing and leaves unresolved a serious jurisdictional dispute of long standing."

Board member Jenkins then went on and stated at page 9:

"The Ternstedt job, which is the only one embraced within the 'settlement', presumably was completed long ago, and under Respondents' terms, and notwithstanding the fact that the parties themselves recognized that the conflicting claims of the Riggers and Millwrights have been a continuous source of controversy, nothing in this agreement even tends to resolve that controversy. The brief filed on behalf of Don Cartage refers to several recent efforts on the part of the Millwrights to obtain work assigned to members of the Riggers, and some of these efforts have led to charges which are presently pending with this agency . . ."

Board member Jenkins stated at page 10:

"There is still a further reason for not approving the agreement. Section 10(k) of the Act directs the Board to hear and determine disputes cognizable under that Section. As the Supreme Court has told us, in such cases it is the Board's responsibility and duty to decide which of two or more competing employee groups claiming the right to perform certain work tasks is right and that specifically to award such tasks in accordance with its decision.' NLRB v. *Radio and Television Broadcast Engineers Union (Columbia Broadcasting System)* 364 U.S. 573. I cannot consider the Board's approval of the instant agreement a discharge of that responsibility and duty. The agreement can hardly be termed a "determination" of the long, continuing dispute between the Riggers and the Millwrights, for it leaves the parties in no better position than they were before the 10(k) hearing, and ignores the agreed-upon submission to the board of the *entire* dispute — not just

the Ternstedt job. The dispute in existence then continues to exist and will continue to vex the parties and lead to wasteful work stoppages. Nothing short of a full determination of that dispute will suffice, and this is what the Congress directed the Board to do."

Board member Jenkins then concludes:

"For the foregoing reasons, I would not approve the 'settlement agreement' nor quash the Notice of Hearing. Instead, I would do what I believe the Act commands us to do. The hearing has been held, the record has been made, and I would proceed to determine the merits of the dispute on the basis of that record and make an award in accordance with that determination."

3. MAJORITY OPINION CLEARLY ERRONEOUS.

The opinion of the erring majority of the Board in view of the 10(k) mandate of Congress as interpreted by the U.S. Supreme Court is indeed ludicrous!

At page 3 of the Opinion, the erring Board majority says:

"The arguments of the opponents of the Settlement Agreement are weighty, but we believe that they are overbalanced by other considerations discussed below, which justify the Board in refusing *at this time* to make an award which extends beyond the particular dispute at the Ternstedt project."

After making the above statement the Board then spends the better part of two and one-half pages explaining that the A. F. of L. Building and Construction Trade Depart-

ment has entered into new agreements which were signed by parties other than the Employers in this case.

Finally, at page seven, near the very end of its decision, the Board majority said:

"If we were to make a determination which extended beyond the Ternstedt dispute, we would be undercutting the new Joint Board at the very beginning of its operations and lessening its chances of success. The Board, employers, unions, and the public all have something to be gained by the successful operation of a voluntary system for the settlement of jurisdictional disputes. The Board, unions, and employers generally will save many times over the money expended on the hearing in this case if the new Joint Board will satisfactorily resolve, and therefore make unnecessary the submission of even a small proportion of the jurisdictional dispute cases that would otherwise come before the Board.

The Board's majority opinion is just contrary to provisions of Section 10(k) as interpreted by the U.S. Supreme Court. Here, members of Riggers Local 575 and members of Millwrights Local 1102 are competing for work assigned by these employers, pursuant to a collective bargaining contract, to Riggers Local 575 members. Under these circumstances the *U.S. Supreme Court in NLRB vs. Radio and Television Broadcast Employees Union* at 364 US 573, 5L ed. 2d 302 81; S. CT. 330 (1961) (hereinafter called the "CBS" Case) said at page 586:

"We conclude therefore that the Board's interpretation of its duty under Section 10(k) is wrong and that under that section it is the Board's respon-

sibility and duty to decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically to award such tasks in accordance with its decision. Having failed to meet that responsibility in this case, the Board could not properly proceed under Section 10(c) to adjudicate the unfair labor practice charge."

4. 10(k) HISTORY ILLUSTRATES MAJORITY ERROR.

In order to completely appreciate the impact of the above language from *CBS* and the Court's decision therein it is necessary to consider the infamous history from 1947, the date of the enactment of Section 10(k) to January 9, 1961, the date of the Supreme Court's *CBS* decision, of the Board's efforts to shirk its duty and responsibilities under Section 10(k). In passing it may be added that this is exactly what the Board is doing in the instant case and is exactly why petitioners appear before this honorable Court, namely, to stop this administrative irresponsibility.

As explained in *CBS* at 364 U.S. 578, the Board, prior to *CBS* had erroneously interpreted its duty under Section 10(k) as requiring it only to affirm the work assignment of the employer unless the respondent union could show it was entitled to the work because of an outstanding Board order or certification, or a collective Bargaining Agreement. This was a narrow interpretation of the meaning of the words "hear and determine the dispute" in Section 10(k).

This narrow interpretation on the part of the Board was deliberate. The Board was acting like a scared cat in its attempting to run away from its responsibilities given it by Congress. Proof positive of this statement is the following quotation found in Schmidt, *What is the current*

status of work assignment disputes. The position of NLRB since CBS 16 Labor L.J. 270 wherein Mr. Schmidt quoting statements attributable to Robert Denham, then General Counsel of the National Labor Relations Board, in 1948 shortly after the enactment of 10(k) says at 270:

“On February 1, 1948, Robert Denham, then General Counsel of the National Labor Relations Board (NLRB), made the following statement in an address before the Association of General Contractors (AGC) in requesting their support of voluntary procedures to settle work assignment jurisdictional disputes:

“It is no secret that the Board is not made up of experts in the Building and Construction Industry, versed either from the standpoint of the employers or unions, in the intricacies of work allocation. And it is perfectly obvious that, if this procedure (the 10(k) procedure) is resorted to, there is a reasonable chance that the result would not be satisfactory to either of the disputants or the employer.

“We frankly do not want to be plunged into this new field that is strange territory to us, in which we would be compelled to become experts almost overnight, but we will do it if we must. The alternative is for you of the Industry to force us off from the field by a program of this character (the settlement plan in relation to the ‘adjustment’ provision of Section 10(k)). It is the most important contribution you can make to the economy of the nation at this time, and at the same time it is one of the most important things you can do for your own welfare.”

It is true that the Fifth Circuit in *N.L.R.B. vs. U.S. Local 450 International Union of Operating Engineers* 275

F2d, 413 accepted this narrow interpretation. However, three circuits, the Second, Third and Seventh Circuits held that the Board had the responsibility and duty to affirmatively award the disputed work to one group or the other group of employers. *NLRB vs. United Association of Journeymen* 242 F2nd 722 (3rd Cir. 1957; *NLRB vs. United Brotherhood of Carpenters and Joiners* 261 F2nd 166 (7th Cir. 1958; *NLRB vs. Radio and Television Broadcast Employees Union* (2nd Cir. 1959).

The key to the position taken by the 2nd, 3rd and 7th Circuits that Section 10(k) required the Board to make an affirmative award or determination was the legislative history of Section 10(k). Perhaps the best description of the legislative history is found in Judge Hastie's decision on behalf of the 3rd Circuit in *NLRB vs. United Association of Journeymen, supra*. After explaining that the idea for the settlement of jurisdictional disputes originated in the Senate, Judge Hastie says at 725:

"The conference committee of the two houses omitted the Senate approved alternative procedure of appointing an arbitrator and agreed upon Section 10(k) in its present form providing only for adjudication by the Board itself. The conference report stated plainly that Section 10(k) "would empower and direct the Board to hear and determine disputes between unions giving rise to unfair labor practices under Section 8(b) (4) (D)," H. R. Conference Rep. No. 510, 80th Cong., 1st Sess. (1947), 1 Legislative History of the Labor Management Relations Act, 1947, 561. When this conference report came to the floor, Senator Morse, the author of the original scheme, objected that the amended version would compel the Board itself in every case to deter-

mine "the proper work task allocations as between unions involved in jurisdictional strikes' rather than permitting the Board to delegate the function to arbitrators who could more effectively utilize the fact finding process of arbitration and its economic approach. 93 Cong. Rec. 6452, 2 Legislative History of the Labor Management Relations Act, 1947, 1554. Senator Murray, emphasizing the advantages of arbitrators, specially skilled and familiar with the peculiarities of individual industries, stated a similar view of the Board's responsibility under the conference text. 93 Cong. Rec. 6506, 2 Legislative History of the Labor Management Relations Act, 1947, 1585. Cf. the discussions of legislative history in *Juncau Spruce Corporation*, 1949, 82 N.L.R.B. 650 656 n.6; *Herzog v. Parsons*, 1950, 1950, 86 U.S. App. D.C. 198, 181 F.2d. 781, 786. No one suggested that this was a mistaken view or an overstatement of the Board's responsibility under Section 10(k) . . ."

It is quite clear from the above "recital" of the legislative history that there were certain members of Congress who wanted the Board's duties restricted in jurisdictional dispute matters along the lines similar to the Board's position prior to the CBS Case. This was the view of President Harry S. Truman in vetoing the Taft-Hartley Act for as Judge Hastie says at 242 F²nd 725:

" . . . Finally, it is noteworthy that Congress enacted this legislation over a Presidential veto which pointed out, among other things, that the provisions now under discussion seemed undesirable because they would induce unions to engage in jurisdictional strikes in order to require the Board to determine

the underlying jurisdictional disputes. 93 Cong. Rec. 7486, 1 Legislative History of the Labor Management Relations Act, 1947, 916 . . . ”

It is well known history that President Truman's views did not prevail as his veto was over-ridden. The U.S. Supreme Court in *CBS* recognized this history at 364 U.S. 580.

The Board's majority opinion herein on August 16, 1965 four and a half years after the *CBS* Case reverts back to its pre- *CBS* position. The Board says it will not make an award “at this time”, but rather will defer the matter to the Joint Board for the settlement of jurisdictional disputes contrary to the wishes of the parties.

5. BOARD HAS REFUSED TO FOLLOW *CBS* HERE.

Such a position was emphatically rejected in *CBS*. Here Don Cartage (and this explains why great efforts were expended in the Statement of the Case to explain the facts) was caught between “the devil and the deep blue.” (The very words used in *CBS* at 364 U.S. 575). Don Cartage had a contract with Riggers Local 575 and because of a picket line of Millwrights Local 102 was being forced into a position of violating its collective bargaining contract or losing a half-million dollar job. Other employer members of the Association have been and are presently being placed in this untenable position. This is the very reason why Section 10(k) was enacted so as to protect the innocent employer and why the words “hear and determine the dispute” were specifically used. The rationale of the Supreme Court in *CBS* is explained at page 364 US 579 as follows:

“The words “hear and determine the dispute” convey not only the idea of hearing but also the idea of deciding a controversy. And the clause “the dis-

pute out of which such unfair labor practice shall have arisen" can have no other meaning except a jurisdictional dispute under Section 8 (b) (4) (D) which is a dispute between two or more groups of employees over which is entitled to do certain work for an employer. To determine or settle the dispute as between them would normally require a decision that one or the other is entitled to do the work in dispute. Any decision short of that would obviously not be conducive to quieting a quarrel between two groups which, here as in most instances, is of so little interest to the employer that he seems perfectly willing to assign work to either if the other will just let him alone . . ."

Nothing more need be said.

Every court of appeals that has considered the question since the CBS case has followed that case explicitly and has held or recognized that the Board, pursuant to Section 10(k), must determine the merits of the dispute and make an award of the disputed work. *NLRB v. Local 825 International Union of Operating Engineers*, 326 F2nd 218 (3rd Cir. 1964) *NLRB v. Local 101 International Union of Operating Engineers*, 315 F2d 328 (10th Cir. 1963); *NLRB v. Local Union No. 3 International Brotherhood of Electrical Workers* 339 F2d 145 (2nd Cir. 1964); *N.L.R.B. v. Local 991 International Longshoreman's Association* 332 F2nd 66 (5th Cir. 1964).

There can hardly be any question that in this present Don Cartage Case the Board is attempting to "duck" or "muffle" their responsibility under Section 10(k).

As applicable to the case at bar, no more precise language as to the meaning of CBS can be found than in the decision

of the 9th Circuit in *International Brotherhood of Carpenters v. C. J. Montag & Son, Inc.* 335 F2nd. 216 (1964) which was a damage suit brought by employer against the Millwrights for illegal jurisdictional strike of work assigned to Riggers, pursuant to Section 303 (a) of the National Labor Relations Acts as amended. In *Montag*, the Court speaking of the Board's duty under 10(k) said, at page 222:

‘If this case had gone to the National Labor Relations Board for administrative handling under Section 10(k) of the Act, 29 U.S. Code Section 160(k), and the Board had made a decision such as the Joint Board made in the case it would have been the duty of a reviewing court to send the case back to the Board with a direction that it should do its work. *NLRB v. Radio and Television Broadcasting Eng. Union* 364 U.S. 573, 81 S. Ct. 330, mentioned *supra* herein. A jurisdictional dispute is not “determined” by attempting to muffle it by a decision which embodies the evils of duplication and featherbedding at the expense of the employer, which Congress sought to eliminate . . .’

And, incidentally, the 9th Circuit was very, very, critical of the Joint Board’s ability to handle jurisdictional disputes which only goes to buttress the employers’ insistence on using the facility of the National Labor Relations Board in settling a vexing jurisdictional dispute which is a right given them by Congress.

Prior to *CBS* the Board refused to make jurisdictional determinations and awards. After *CBS* the Board recognized that it had to make jurisdictional determinations and awards and did so. On August 16, 1965 the National Labor

Relations Board proceeded to defy the U.S. Supreme Court and the Congress of the U.S. and refused to make a determination and award of the disputed work. Pursuant to 10(k) and *CBS* the Board had absolutely no right to tell the parties to go to the Joint Board, as the majority in fact did here, but instead had the affirmative duty to determine and award the disputed work.

This is administrative agency anarchy that cannot be permitted.

II

THE NLRB, WHICH, PURSUANT TO THE DIRECTION OF THE SUPREME COURT OF THE UNITED STATES, ADOPTED CERTAIN POLICIES DESIGNED TO DETERMINE JURISDICTIONAL DISPUTES CANNOT REFUSE TO APPLY THESE POLICIES TO THE CASE AT BAR WHEN IN FACT IT APPLIED THESE POLICIES TO OTHER CASES IMMEDIATELY BEFORE AND IMMEDIATELY AFTER CONSIDERING THE CASE AT BAR.

1. PRIOR TO *CBS*, BOARD AVOIDED THIS DISPUTE.

In the section of this brief entitled "Statement of the Case", beginning at page 14 herein, petitioners at the expense of being criticized have 'taken great pains to develop the facts so as to clearly illustrate that the employers herein are caught "between the devil and the deep blue".

Don Cartage Company at Ternstedt was not only complying with its collective bargaining agreement with Riggers Local 575 which had been negotiated by the Association, but was making the assignment of the work to Local 575 pursuant to its long-standing practice and its general business orientation. Thanks to the illegal picketing of Millwrights Local 1102, Don Cartage, in the short space of

one day, lost a half-million dollar contract. This Millwright-Rigger jurisdictional dispute, as set forth in the statement of the case, existed long before the Ternstedt situation and was the source of harrassment to the Employers. It continues up to the present and in the month of November, 1965, there have been at least two Millwright-Riggers picket lines in Michigan directed at the Employer members of the Association.

If the Board had been following the mandate of Section 10(k) prior to *CBS*, this jurisdictional dispute would have been resolved in 1960 where the matter was presented to the Board in that year. (*General Riggers & Erectors, Inc.* 127 NLRB 26) But, the Board, contrary to 10(k) made no determination or award of the disputed work there. Based upon this Board failure, Millwrights Local 1102 subsequently had the case dismissed by relying (this was before *CBS*) on the opinion of the Second, Third and Seventh Circuits, i.e. *National Labor Relations Board vs. Pipefitters and Plumbers Local 420* and 428, 242 F 2d 722 (Third Cir. 1957); *NLRB vs. United Brotherhood of Carpenters and Joiners of America*, 261 F 2d 166 (Seventh Cir. 1958); *NLRB vs. Radio and Television Engineers Local 1212*, 272 F 2d 713 (Second Cir. 1959).

Then came the *CBS* decision.

2. BOARD ACCEPTED AND FOLLOWED *CBS*.

Shortly after *CBS* the Board recognized the 10(k) mandate and honored the Supreme Court's directive in *CBS* and in *International Association of Machinists (J. A. Jones Construction Co.)* 135 NLRB 1402 decided February 28, 1962, the Board announced that it would follow 10(k) and *CBS* and would make determinations and awards of disputed work using certain guideline factors set forth in *Jones*.

3. FOLLOWING CBS, BOARD SET CERTAIN POLICIES.

On the very same day, the Board decided *International Union of Operating Engineers, Local 66 (Frank P. Badolato & Son)* 135 NLRB 1932 (February 28, 1962), wherein, though the job which gave rise to the instant dispute was completed, the Board held that the jurisdictional dispute was not moot nor settled. Thus the Board set a general policy pursuant to CBS and held in *Frank Badolato*, page 1401, as follows:

"As heretofore stated, the Engineers contends that since the job in which the dispute arose has been completed, the case is now moot, pointing out that the Joint Board in settling such disputes ordinarily restricts itself to the particular job involved and urgent that this Board should follow the same practice. We do not agree that the case is moot, particularly where, as here, the evidence discloses a number of similar disputes in the recent past and there is no evidence that similar disputes will not occur in the future. In such cases, we also do not agree that, as a policy matter, this Board should restrict itself to a single job determination. It seems to us apparent that a practice which may be desirable for a private and voluntary settlement may not be equally valid where a public body acts pursuant to statute. We believe that the scope of the determination in 10(k) cases should be decided upon the basis of the facts in each case. Under the facts of the instant case, we hold that the determination should apply to Badolato's plastering contracting operations within the Tri-state area, in which he normally operates."

The *Badolato* policy continues to be the policy of the Board today except perhaps where these petitioners are involved. Thus, on May 26, 1965, the Board in *Plumbers and Pipefitters Union (Bernard Pipeline Company)* 152 NLRB No. 98, where the job involved was completed before the Board's decision, the Board said:

“The Board has held that a jurisdictional dispute is not moot, even though the particular work has been completed, where there is evidence of similar disputes in the past and nothing to indicate that such disputes will not occur in the future. In the instant case, the Company has every expectation of performing work again in the areas of geographical jurisdiction covered by Respondents. Accordingly, we find that the dispute is not moot and shall make the assignment of the disputed work . . .”

And the Board has continued in 1964 and as late as April 29, 1965 to make award covering all future activity involving the disputed work in the geographical areas where the unions involved operate. *International Association of Bridge, Structural and Iron Workers Local 474 (Structural Concrete Corporation)*, 146 NLRB 152 (1964); *Local Union No. 272 et al (Prestress Erectors, Inc.)* 152 NLRB No. 221 (April 29, 1965). Specifically, in *Structural Concrete Corporation, supra*, the Board said:

“. . . Since there is a strong probability that similar disputes may occur in the future, we hold that the determination in this case applies, not only to the job in which the dispute arose, but to all similar work done or to be done by Structural Concrete Corporation in which it uses its own crew to do the erection work. In making this determination, we are

assigning the disputed work to employees represented by the Steelworkers, but not to that labor organization or its members."

Even after petitioners filed their Answer to the Show Cause on July 1, 1965, the Board made an award covering the employers future work in Denver, Colorado and vicinity. *Local Union No. 68, Wood Wire and Metal Lathers (State Lathing Co., Inc.)* 153 NLRB No. 90 (July 1, 1965).

Likewise, since CBS and even prior, the Board has held that the Joint Board for the settlement of jurisdictional disputes is not a voluntary method of adjustment, if the Employer has not agreed to be bound thereby even though the unions may so have agreed. *Local 825, International Union of Operating Engineers, (Nicholas Electric Company)* 140 NLRB 458, Enf. 326 F2d 213 (3rd Cir. 1964); *United Brotherhood of Carpenters and Joiners, Local 1611 (O. R. Karst)* 139 NLRB 591.

4. HERE BOARD REFUSES TO FOLLOW POLICIES.

Then comes "D Day" — August 16, 1965 — the issuance of the opinion in the instant case, *Millwrights Local Union 1102 et al (Don Cartage Company)* 154 NLRB No. 45. The erring majority opinion tells us two things:

1. The employers, though there is no finding that they are bound to go to the Joint Board should go to the Joint Board with the jurisdictional dispute; and
2. At page 3 of the Opinion "The settlement agreement does resolve this dispute," and at page 6 "The settlement agreement determines the par-

ticular jurisdictional dispute which gave rise to the present proceedings."

The last statement is a classic example of the colloquial phrase "speaking with tongue in cheek". If this was so then, there would have been no harrassment of the employers since the Don Cartage hearing ended on July 31, 1964 and there would not have been any picketing of the employers as recent as November, 1965. The fact of the matter, in the spirit of *Badolato, Structural Concrete Corporation, Prestress Erectors, Inc.* and *State Lathing Company*, this jurisdictional dispute is continuing and must be determined and awarded in order to bring labor peace.

5. IN CASES AFTER THIS CASE, BOARD APPLIES PREVIOUS POLICIES.

Now let us hear what the Board has done since August 16, 1965. On November 9, 1965, the Board in *Plumbers Local 562 and Local 318, United Association of Journey-men and Apprentices et al (Layne Western Company)* 155 NLRB No. 66, either reverted back to or continued its long-standing policy that an Employer is not bound to go to the Joint Board if he has not agreed to go to same. Also see *Local 300, United Association et al (D'Amunzio, Inc.)* 154 NLRB 1410 (November 15, 1965); *Local No. 428, International Union of Operating Engineers (ETS — Hoskin Corp.)* 154 NLRB No. 53 (August 31, 1965).

As to the policy of assigning future disputed work in the geographical area involved, the Board again, after Don Cartage reiterated its policy of assigning all future work in a geographical area if there is a continuing dispute. Thus, on November 9, 1965, the Board said in *Layne Western Company, supra* 15, as follows:

"When it has deemed it appropriate, the Board, in making an award in a dispute that is likely to recur between the same parties, has made that award broad enough to encompass at least the geographical area in which the employer operates, and in which the jurisdictions of the unions coincide. However, as no evidence was adduced in this case to show either that this dispute is of a recurring nature or one of long standng, we do not think it appropriate to determine here more than the specific work dispute which gave rise to the alleged 8(b) (4) (D) violation."

Who is kidding whom? The Board has done a flip-flop. It sets a policy pursuant to *CBS*. On August 16, 1965, because it does not want to decide a case as required by *CBS*, tries to avoid the policy. Immediately thereafter, the Board reaffirms and continues its previous established policy in subsequent cases.

We are not so naive as to suggest to this distinguished Court that an administrative agency must follow the rule of *stare decisis* or to be absolutely consistent because of the need of flexibility. However, one court did state that:

"Consistency in administrative rulings is essential and to adopt different standards for similar situations is to act arbitrarily." *NLRB vs. Mall Tool Co.*, 119 F2d 700, 702 (Seventh Cir. 1941).

Though petitioners are willing to admit some agency flexiblty, this is not a question of flexibility. This is a question of flip-flopping, a question of avoiding a duty under Section 10(k). It comes closely within the language used by Professor Louis L. Jaffe who in discussing the problem of

consistency in administrative agency rulings said in his excellent new treatise, Jaffe, *Judicial Control of Administrative Action*, at page 588 (Little, Brown and Company, 1965) as follows:

“... Furthermore, alleged inconsistency is closely related to a pattern of reasons which supports the majority's decision. Discretion, however valuable, can be a facade for inadequate thinking, failure to face issues, hidden expediencies or downright dishonesty. These vices multiply, in large, overwork agencies where the power of decision may be fractionated and diffused ...”

The fact of the matter is that the NLRB in this case, for reasons unbeknownst to the innocent employer petitioners, refuses to perform its duties under Section 10(k).

CBS specifically requires a determination and award of the disputed work to one group of employees or another. The main thrust of the Board's majority opinion in *Don Cartage* is that the employers should use the Joint Board. This is just the opposite of what the Supreme Court said in *CBS* and what 10(k) requires.

In the name of justice and fair play, this Court cannot allow the National Labor Relations Board to set policies on one day and then, when faced with a difficult case, refuse to follow its policies (which were dictated by an Act of Congress and the Supreme Court of the United States) and then on the next day continue to follow its previous policies in other cases that apparently the Board does not consider difficult to decide.

III

IT IS NOT CONSISTENT WITH FAIR PLAY AND JUSTICE, PARTICULARLY AFTER ALL THE PARTIES HAVE AGREED ON THE RECORD TO SUBMIT THE DISPUTE TO THE BOARD, FOR THE BOARD TO REFUSE TO DECIDE THIS JURISDICTIONAL DISPUTE LAWFULLY SUBMITTED TO IT, PARTICULARLY AFTER THE PARTIES ENGAGED IN A 34 DAY HEARING, DEVELOPED A 3900 PAGE RECORD AND FILED EXTENSIVE BRIEFS AND SPENT TIME, MONEY AND EFFORT TO MAKE ALL FACTS AVAILABLE TO THE BOARD SO IT COULD MAKE A JURISDICTIONAL DETERMINATION.

It is rank injustice and unfairness to permit the National Labor Relations Board to do what they have done here. The above statement follows for two reasons:

1. On the second day of the hearing in the instant case, May 1, 1965, the attorney for Millwrights Local 1102 and the Carpenters' District Council, Mr. Rolland O'Hare, at page 63 of the transcript agreed that the Board should not limit its determination to the Ternstedt situation but should make a determination awarding the work in dispute to all future job disputes where Riggers Local 575 and Millwrights Local 1102 are operating in conjunction with one another in their respective geographical areas. The following is found at page 63 of the transcript:

"MR. O'HARE: I agree that the Board should issue a determination which binds — I am sorry — which deals with all of these parties on all of the kind of work that is in dispute here."

HEARING OFFICER: In the whole area. In other words, you don't want it confined to just Ternstedt Division?

MR. O'HARE: I don't want it confined just to Ternstedt Division. I would have to know what you and Mr. Bennett mean by the whole area before I would be willing to limit it that far."

At page 64 Mr. O'Hare made the following statement:

HEARING OFFICER: I didn't say beyond that area.

MR. O'HARE: What I was afraid of you were limiting it.

MR. BENNETT: NO.

HEARING OFFICER: No. I was not limiting it.

MR. O'HARE: I think it should apply among the parties represented in this hearing, whenever those parties may be found operating in conjunction with one another.

HEARING OFFICER: Wherever?

MR. O'HARE: Wherever."

At page 63 Mr. Donald Prebenda, the attorney for the Detroit Building Trades Council, agreed to this proposition as did Frank Bennett, attorney for Riggers Local 575 and as did counsel for the petitioning Employers. The business agent for Millwrights Local 1102, George Horn, was at the hearing at the time this agreement was made. At the same time, as set forth in the Jurisdictional Statement at page 6, the description of the work in dispute was broadened. Furthermore, the hearing officer, a representative of the National Labor Relations Board, recognized the broadened definition of the dispute and the agreement of the parties to have the Board make a determination and award all future disputed work in the geographical area involved (Tr. 071-2, 2054).

2. Based on the above agreement and understanding, the parties developed a record of 3981 pages and spent some 34 days in trial in expectation that the Board would make a determination of an award of the disputed work to either Millwrights Local 1102 or Riggers Local 575 and thus bring labor peace to the harassed Specialty Rigging Industry in Michigan. These efforts took time and money. Extensive briefs were filed after the close of the hearing, and then, over a year later, the Board accepted the *ex parte* alleged settlement agreement which is contrary to the agreement of the parties on record and contrary to the requirements of Section 10(k) as set forth in the *CBS* case.

Petitioners anticipate that the Board will argue that no one can make a contract submitting a jurisdictional dispute to the Board or force the Board to make a decision, but this argument is fallacious, for here the Board has, contrary to 10(k) and *CBS*, refused to make a determination and award the disputed work.

Petitioners point out to the Court that their entire case is based upon procedure. Petitioners want the work awarded to Riggers, members of Riggers Local 575, but yet, petitioners recognize that the Board may award the work to Millwrights, members of Millwrights Local 1102. Petitioners are not asking this Court to make an award; all they are asking the Court to do is require the Board to do its duty and make a determination and award. The petitioners are willing to take their chance as to a determination and award on the merits.

The main point is that petitioners are entitled to their day before the Board on the merits. Justice and fair play require it.

IV

THE BOARD CANNOT ENTER INTO AN *EX PARTE* ALLEGED SETTLEMENT AGREEMENT OF A JURISDICTIONAL DISPUTE OVER THE VIGOROUS PROTESTS OF THE INTERESTED EMPLOYERS AND ONE OF THE INTERESTED UNIONS WHEN SUCH AN AGREEMENT IS NOT PROVIDED BY BOARD RULES, BOARD PROCEDURES AND LAW, AND THE ALLEGED SETTLEMENT DOES NOT DETERMINE THE DISPUTE AS IT IS A CONTINUING ONE, PRESENT TO THIS VERY DAY.

The Board's use of the device of *Ex Parte* alleged settlement herein is contrary to Board rules, Board procedure, and law.

The *ex parte* alleged Settlement Agreement was indeed over the protest of the petitioning employers and Riggers Local 575, the other union in interest. Petitioners are very well aware that this court had taken the position that the Board may settle an unfair labor practice charge over the objection of the charging party. *Textile Workers Union of America, AFL-CIO (Roselle Shoe) v. National Labor Relations Board*, 111 U.S. App. D.C. 109, 294 F2d 738. This course has been followed by the 2nd Circuit, *Local 282 International Brotherhood of Teamsters v. N.L.R.B.* 339 F2d 795 (1964). However, in recent months this court has limited the right of settlement over protest. *Retailing Clerk's Union 1059 et al v. N.L.R.B.* 348 F2d 369 (6/29/65).

However, if anything, *Roselle Shoe* supports petitioners' position that the settlement procedure followed by the N.L.R.B. herein were contrary to the Board procedure and law. The key is Judge Fahy's statement at 294 F2d 738, 739 wherein he says:

"The Board contends that the charged party is not essential to settlement of an unfair labor prac-

tice proceeding. We may well agree since the selection of cases to be pursued to the end through adversary proceedings is a responsibility of the Board . . .”

This is just the point! A 10(k) proceeding is not an adversary proceeding. If the Board does not have the responsibility of prosecution, 10(k) gives the Board only one responsibility, the responsibility of decision. It is the parties themselves who present the case.

Section 101.34⁷ of the Statement of Procedure established by the National Labor Relations Board says as follows:

It is quite clear that a 10(k) hearing is non-adversary and that the dispute is submitted to the Board “for decision” and “for resolution”.

Board rule 102.93 set forth in full herein at page 27 provides that “the parties” can submit satisfactory evidence of adjustment”.

The key to rule 102.93 is the words “the parties”. All parties must agree to a settlement. Furthermore, rule 102.93 refers to settlements before hearing. The Roselle case and *Local 282, International Brotherhood of Teamsters 282 v. N.L.R.B. supra*, were both cases where the settlement was entered into prior to hearing.

Here there was a 34 day hearing and the parties had been waiting for several months after submitting briefs for the determination and award of the disputed work. This is not the normal unfair labor practice situation. It is a 10(k) hearing. Under the published rules and procedures of the Board there is absolutely no basis for this *ex parte* alleged settlement.

7. Section 101.34 is set forth in full herein at page 28.

Furthermore, the settlement settles nothing. All the alleged *ex parte* Settlement Agreement provides is that Millwrights Local 1102 will not picket Don Cartage at the Detroit Ternstedt Plant. But Don Cartage left that job on March 4, 1964. Likewise the Settlement Agreement says that Millwrights Local 1102 would withdraw their demands on Don Cartage for work at the Ternstedt Plant. But Don Cartage left the Ternstedt Plant March 3, 1964.

A reading of the *ex parte* alleged settlement agreement in the Joint Appendix illustrates how ludicrous it is. It settles nothing. The dispute is a continuing one and has caused continuous harassment to all these employers throughout this litigation up and through November, 1965. It is about time that the Board faces up to the facts and makes a determination and award of the disputed work either to Riggers, members of Local Riggers 575 or to Millwrights, members of Millwrights Local 1102. This is all the petitioning employers ask.

CONCLUSION

For the cogent reasons set forth above petitioners urge this court to set aside the order of the Board and direct the Board to make a determination and an assignment of the work in dispute between Riggers Local 575 and Millwrights Local 1102 in the specialty rigging industry in Michigan in accordance with Section 10(k) of the Act as interpreted by the Supreme Court of the United States in *CBS* and in accordance with the Agreement on the record herein made by all the parties.

Respectfully submitted,

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BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,673

JOHN QUINN AND RIGGERS AND MACHINERY ERECTORS, LOCAL 575, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 19,686

DON CARTAGE COMPANY, a Michigan Corporation,
and MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS' DIVISION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petitions to Review and Set Aside An Order of the
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STATEMENT OF QUESTION PRESENTED

As set forth in the prehearing conference stipulation (J.A. 1-3), the Board maintains that the question presented is whether the Board, in an unfair labor practice proceeding arising under Section 8(b) (4)(D) of the Act, properly approved a settlement agreement and quashed a notice of hearing issued pursuant to Section 10(k) of the Act.

As further set forth in the prehearing conference stipulation, the petitioners maintain that the question presented is whether the Board, in a proceeding under Section 10(k) of the National Labor Relations Act as amended, properly, after hearing and the making of the record, issued a Decision and Order which was not dispositive of the jurisdictional dispute involved in accordance with a mandate of the Act as interpreted by the Supreme Court in *N.L.R.B. v. Radio and Television Broadcast Engineers Union (Columbia Broadcasting System)*, 364 U.S. 573, and as stipulated to by all the parties on the record and which further refers to matters not before the Board.

The statement of questions presented in petitioners' brief in No. 19,686 is at variance with their statement of the question in the prehearing conference stipulation.

III

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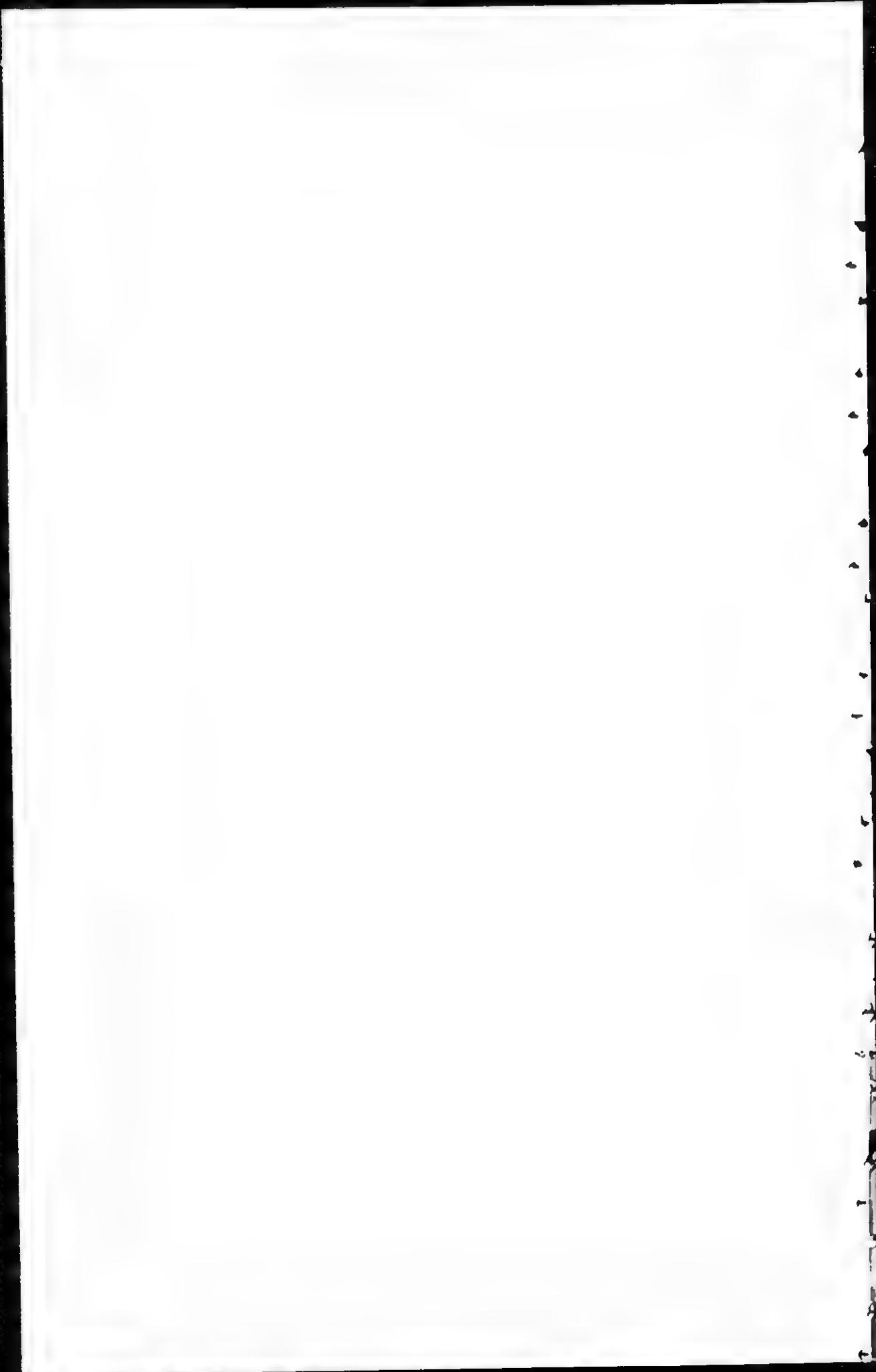
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NATIONAL LABOR RELATIONS BOARD, RESPONDENT

On Petitions to Review and Set Aside An Order of the
National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

(1)

COUNTERSTATEMENT OF THE CASE

These consolidated cases are before the Court on petitions to review and set aside an order of the Board issued on August 16, 1965, filed pursuant to Section 10(f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, *et seq.*). The petition in No. 19,673 was filed by John Quinn, an individual who was a charging party before the Board, and by Riggers and Machinery Erectors, Local 575, a "union in interest" in the proceeding before the Board. The petition in No. 19,686 was filed by Don Cartage Company, a second charging party, and by Michigan Cartagemen's Association, Heavy Haulers' Division, an intervenor in the Board proceedings. The Board's Decision and Order (J.A. 53-60)¹ are reported at 154 NLRB No. 45.

I. The Board Proceedings

On March 4, 1964, Don Cartage Company and John Quinn filed charges with the Board's Regional Director in Detroit, Michigan, alleging that on or about March 3, 1964, Millwrights 1102,² Carpenters District Council,³ and Detroit Trades

¹ References designated "J.A." are to the joint appendix. References preceding a semicolon are to the Board's Decision and Order; those following are to the record. "Br." references are to the brief filed by petitioners in No. 19,686.

² Millwrights Local Union No. 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

³ Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinities, United Brotherhood of Carpenters and Joiners of America, AFL-CIO.

Council,' had violated Section 8(b)(4)(D) of the Act by engaging in, and inducing and encouraging, a work stoppage at a project at General Motor's Ternstedt Division Plant No. 9 in Detroit in order to compel Don Cartage and the Ternstedt Division to assign particular work to members of Millwrights 1102 rather than to members of Riggers and Machinery Erectors, Local 575, International Association of Bridge, Structural and Ornamental Iron Workers of America, AFL-CIO (hereinafter called Riggers 575) (J.A. 53; 186, 195, 202, 209, 218).⁵ Upon a finding by the Regional Director that there was reasonable cause to believe that a violation of Section 8(b)(4)(D) had occurred,⁶ and in the absence of evidence that Don Cartage and the involved unions had agreed on a voluntary method for adjusting the dispute,⁷ the Board's Acting Regional Director

⁴ Detroit and Wayne County, Oakland and Macomb Counties, Michigan Building and Construction Trades Council.

⁵ The Ternstedt project involved an undertaking by Don Cartage to dismantle, move, and erect heavy machinery and equipment for General Motors under a short-term contract (J.A. 55; 88-91, 93-96). The dispute concerned work in the erection and installation phase of the project (J.A. 227).

⁶ See *Herzog v. Parsons*, 86 U.S. App. D.C. 198, 181 F. 2d 781, cert. denied, 340 U.S. 810.

⁷ See Section 10(k) of the Act. Both Riggers 575 and Millwrights 1102 were bound, through the membership of their parent internationals in the Building and Construction Trades Department, AFL-CIO, to submit all jurisdictional disputes to the National Joint Board for the Settlement of Jurisdictional Disputes (J.A. 58; 271). However, there was no evidence indicating that Don Cartage was similarly bound (J.A. 58).

in Detroit, on April 9, 1964, issued a notice of hearing pursuant to Section 10(k) of the Act, notifying the parties that a hearing would be held before a Board hearing officer "upon the dispute [i.e., the Ternstedt dispute] alleged" in the aforementioned charges (J.A. 226-227). Pursuant to said notice, a hearing was held on various dates from April 30, 1964, through July 31, 1964 (J.A. 53).

II. The Settlement Agreement

After the hearing had been concluded, but before the Board issued its determination, the Board's Acting Regional Director, Millwrights 1102, and the Carpenters Council, on May 20, 1965, entered into a settlement agreement (J.A. 4-5) in the Section 8(b) (4)(D) unfair labor practice proceeding, whereby the charged unions agreed (J.A. 4) that they were not:

entitled by means proscribed by Section 8(b) (4) (i) and (ii) of the National Labor Relations Act, as amended, to force or require Don Cartage Company to assign certain disputed job tasks performed by it, involving the erection and installation of machinery and equipment at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan, to employees who are members of, or represented by, Millwrights Local No. 1102 rather than to employees who are members of, or represented by, [Riggers 575] . . . to whom the work was assigned by Don Cartage Company. The Unions further withdraw any request for assignment of said work performed by Don Cartage Company

at Ternstedt Division Plant No. 9, General Motors Corporation, Detroit, Michigan.

On May 28, 1965, the Board issued a notice to all of the petitioners herein, directing them to show cause "why the Board should not approve the Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing" (J.A. 6). Thereafter, petitioners filed answers (J.A. 7-23) opposing approval of the settlement agreement on the grounds that they had not approved the agreement, that the agreement was improper, that at the hearing before the hearing officer the parties had agreed that the Board should make a jurisdictional award extending beyond the Ternstedt dispute, and that the parties had expended considerable amounts of money and time in the proceeding in the expectation that the Board would render an award embracing future disputes in a wide geographical area.*

III. The Board's Decision and Order

In its Decision and Order issued on August 16, 1965, the Board approved the settlement agreement and quashed the notice of hearing (J.A. 53-60). Noting that the settlement agreement resolved the Ternstedt dispute and that none of the opposing parties challenged the agreement as it applied to the Ternstedt project (J.A. 59), the Board exercised its discretion to limit its disposition of jurisdictional dis-

* As the record and the responses of the parties fully presented the issues and positions of the parties, the Board denied petitioners' requests for oral argument (J.A. 54, n. 1; 7).

pure cases to the precise dispute giving rise to an unfair labor practice, and concluded that there were important policy considerations warranting its refusal at the present time to render an award extending beyond the Ternstedt dispute. The Board took notice of the fact that "on February 2, 1965, after the completion of the hearing in this case and of the work in dispute at the Ternstedt project, the Building and Construction Trades Department, AFL-CIO, of which the parent Internationals of Millwrights 1102 and Riggers 575 are members, Associated General Contractors of America, and participating Specialty Contractors Employers' Association, signed an agreement at the White House reconstituting, effective April 1, 1965, the National Joint Board for Settlement of Jurisdictional Disputes and establishing new standards and new appeals procedures for the settlement of such disputes" (J.A. 56).⁹ In view of this development and the overriding public policy of encouraging voluntary private settlements of jurisdictional disputes, the Board decided that the new Joint Board should be given the opportunity to resolve future disputes of Millwrights 1102 and Riggers 575 on a voluntary

⁹ The Joint Board was created in 1948 by employers and unions in the building and construction industry as a result of the enactment by Congress of Sections 8(b)(4)(D) and 10(k) of the Act. The purpose was to provide a private means within the industry for settling jurisdictional disputes, as contemplated by Section 10(k), thereby avoiding unfair labor practice proceedings before the Board. For a description of the origin, structure and operation of the Joint Board, see Strand, *Jurisdictional Disputes in Construction: The Causes, The Joint Board, and The NLRB*, Chap. 6 (Washington State University Press, 1961).

basis (J.A. 58-59). The Board was careful to note, however, that its decision was not "irrevocable" and that "if the new Joint Board is unable to resolve the jurisdictional dispute on the broad basis desired, the Board's procedures will then be available for doing so" (J.A. 59).

On September 9 and 10, 1965, petitioners asked this Court to review the Board's Decision and Order (J.A. 46-52).

SUMMARY OF ARGUMENT

A proceeding to determine a jurisdictional dispute under Section 10(k) of the Act can be held only if there is a meritorious unfair labor practice charge outstanding alleging a violation of Section 8(b)(4)(D). The Board has the power to settle alleged violations of Section 8(b)(4)(D), for it has the inherent power to settle any alleged violation of the Act. *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248, 253-254. The only limitation on that power as set forth by decision of this Court is that any party objecting to the proposed settlement be afforded a reasonable opportunity to present his objections, and that the Board set forth on the record its reason for accepting the settlement.¹⁰ The Board having fulfilled those re-

¹⁰ *Textile Workers Union v. N.L.R.B. (Roselle Shoe Corp.)*, 111 U.S. App. D.C. 109, 294 F. 2d 738, enforced after remand, 114 U.S. App. D.C. 295, 315 F. 2d 41. Accord: *Local 282, Teamsters v. N.L.R.B.*, 339 F. 2d 795 (C.A. 2). Cf. *Retail Clerks Union 1059 v. N.L.R.B.*, U.S. App. D.C. , 348 F. 2d 369. But see, *Marine Engineers' Beneficial Ass'n v. N.L.R.B.*, 202 F. 2d 546 (C.A. 3), cert. denied, 346 U.S. 819;

quirements here in settling the 8(b)(4)(D) case, the notice of hearing in the 10(k) proceeding had to be quashed.

Petitioners contend, however, that by virtue of the decision in *CBS*,¹¹ the Board could not approve the settlement agreement over their objections, but had to conclude the 10(k) hearing with an affirmative award of the disputed work. This contention is without merit. The Supreme Court simply held in *CBS* that for a "determination of dispute" under Section 10(k) to be a proper predicate for a subsequent cease and desist order in an 8(b)(4)(D) proceeding, the "determination of dispute" must affirmatively award the disputed work to one or more of the contending unions. The Court did *not* hold in *CBS* that the Board must render an affirmative award under Section 10(k) in every 8(b)(4)(D) case brought before it. On the contrary, it is settled that the Board need not render a 10(k) award merely because an 8(b)(4)(D) proceeding has been initiated. The Board may refuse to proceed with a 10(k) hearing if preliminary investigation of the unfair labor practice charge reveals that the jurisdictional dispute has not given rise to a strike or threat of strike proscribed by Section 8(b)(4),¹² or where the dispute alleged in the charge has been rendered moot by completion of the

Leeds & Northrup Co. v. N.L.R.B., F. 2d (C.A. 3),
61 LRRM 2283.

¹¹ *N.L.R.B. v. Radio and Television Broadcast Engineers Union*, 364 U.S. 573.

¹² *Herzog v. Parsons*, 86 U.S. App. D.C. 198, 181 F. 2d 781, cert. denied, 340 U.S. 810.

work in question.¹³ In the instant case, the Regional Director and the charged union entered into a settlement agreement wherein the unions agreed to refrain from engaging in conduct proscribed by Section 8(b) (4)(D) at the Ternstedt project. This agreement made a cease and desist order under Section 8(b)(4)(D) unnecessary, and so obviated the need for an award under Section 10(k) as well.

It is true, of course, that the Board could have refused to accept the Ternstedt settlement in order to render an award applicable to future disputes which might arise between Riggers 575 and Millwrights 1102. The Board, however, exercised its discretion and declined petitioners' request for a broad award at the present time, on the ground that the National Joint Board for Settlement of Jurisdictional Disputes, as recently reconstituted with the encouragement of the President of the United States, should first be given the opportunity to resolve any future disputes between the rival unions on a voluntary basis. The Board's action here is consistent with Congress's intent to stimulate "labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks, where they properly should be settled."¹⁴

¹³ *Tip Top Roofers, Inc. v. N.L.R.B.*, 324 F. 2d 773 (C.A. 5); see also, *N.L.R.B. v. Local 101, Int'l. Union of Operating Engineers*, 315 F. 2d 328, 330 (C.A. 10).

¹⁴ Statement by Senator Murray, 2 *Legislative History of the Labor Management Relations Act, 1947*, at 1046 (93 Cong. Rec. 4035).

The Board recognized that Don Cartage has not agreed to be bound by the decisions of the Joint Board, but it expressed the hope that future experience with the Joint Board might induce the employer to adhere formally to the Joint Board's procedures, or at least to accept the Joint Board's award upon submission by the contending unions. Moreover, the Board pointed out that if the Joint Board is unable to resolve any future jurisdictional dispute on the broad basis desired, the Board's facilities will still be available.

In declining to render a broad award, the Board did not act in derogation of policies adopted by it in prior cases. The Board has always held that the scope of its determination in 10(k) proceedings depends on the facts of each case. Here, the unique situation presented by the intervening reconstitution of the Joint Board under the auspices of the President warrants special consideration in order to encourage the private settlement of disputes.

Nor is it determinative that the parties stipulated in the 10(k) hearing that the Board should make a broad determination. The charge and notice of hearing related only to the Ternstedt project, and the Board was not a party to the stipulation which purported to broaden the scope of the hearing. That the parties developed a long record at great expense is not a substantial factor; if the parties should have to come before the Board again, they could stipulate to the incorporation in the new proceeding of the record compiled here. Finally, the Board's refusal to enter

a broad award now does not preclude petitioners from seeking relief under the Act against proscribed conduct in future disputes. Injunctive relieve can immediately be obtained under Section 10(l) of the Act for conduct violative of Section 8(b)(4)(D), and Section 303 of the Act authorizes suits for money damages by any person "injured in his business or property by reason of my violation of [Section 8 (b)(4)]."

ARGUMENT

The Board Properly Approved the Settlement Agreement and Quashed the Notice of Hearing

- A. *In approving the settlement agreement, the Board acted within its broad discretionary authority to settle unfair labor practice cases*

Section 8(b)(4)(D) proscribes work stoppages or threats of work stoppages by a union where an object thereof is to force or require an employer to assign particular work to one group of employees rather than another "unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work. . . ." When a charge alleging such a strike or threat of strike has been filed with the Board, it is investigated by the appropriate regional office of the Board. If, upon investigation, the Regional Director has reasonable cause to believe that a violation has occurred and that a complaint should issue, he does not immediately issue the complaint, as he would if any other unfair labor practice provision of the Act were involved. Rather, if no evidence

is submitted that the dispute over the work assignment itself—i.e., the jurisdictional dispute—has been resolved or that the parties have agreed upon a method for resolving the dispute, a notice of hearing under Section 10(k) of the Act is issued, and the Board undertakes to “hear and determine the dispute out of which such unfair labor practice shall have arisen. . . .”¹⁵ If, after the Board hears and determines the dispute by rendering an affirmative award, the charged union agrees to comply therewith, the unfair labor practice charge must be dismissed. If the charged union does not agree to comply, then an unfair labor practice complaint is issued pursuant to the charge, and a conventional unfair labor practice proceeding under Section 10(b) through (f) of the Act is conducted.

Thus, under the statutory scheme, proceedings to determine jurisdictional disputes under Section 10(k) are purely ancillary to, and dependent upon, the unfair labor practice provisions of Section 8(b)(4)(D). The Board’s power to determine jurisdictional disputes under Section 10(k) “come[s] into play only by a strike or a threat of a strike,” for the Act pro-

¹⁵ See *Herzog v. Parsons*, 86 U.S. App. D.C. 198, 181 F. 2d 781, cert. denied, 340 U.S. 810. If the dispute has been resolved by the parties, Section 10(k) directs that the unfair labor practice charge be dismissed. If the parties have submitted the dispute to a voluntary method of adjustment, further Board proceedings are suspended pending such adjustment. If the charged union accepts the result of the voluntary method, the charge is then dismissed; if the charged union does not comply, the Board would then proceed directly to the unfair labor practice case.

vides no machinery for handling such disputes absent the filing of an unfair labor practice charge under Section 8(b)(4)(D). *Carey v. Westinghouse Corp.*, 375 U.S. 261, 263-264. And while it is true, as petitioners note (Br. p. 57), that a Section 10(k) proceeding itself is non-adversary, the Section 8(b)(4)(D) unfair labor practice proceeding upon which it depends is an adversary proceeding which—like all other adversary proceedings under the Board's jurisdiction—is susceptible to settlement by the Regional Director and the party charged with the unfair labor practice.¹⁰ Indeed, while the Regional Director may refuse to dismiss the charge and settle any other unfair labor practice case if he believes a Board order would be in the public interest, Section 10(k) requires that he dismiss the charge in an 8(b)(4)(D) case if the charged union agrees to abide by an award of the work rendered by either a private body or the Board.

In *Textile Workers Union v. N.L.R.B. (Roselle Shoe Corp.)*, 111 U.S. App. D.C. 109, 294 F. 2d 738, enforced after remand, 114 U.S. App. D.C. 295, 315 F. 2d 41 (hereinafter referred to as the *Roselle Shoe* case), this Court held that a necessary concomitant to

¹⁰ Petitioners' contention (Br. pp. 56-57) that neither the Board's Rules nor its Statements of Procedure sanction such a settlement procedure in Section 8(b)(4)(D) cases is without merit. Section 101.32 of the Board's Statements of Procedure, Series 8 (29 C.F.R. § 101.32), which deals expressly with charges under Section 8(b)(4)(D) in jurisdictional dispute cases, incorporates by reference Section 101.7 of the Statements of Procedure, which in turn outlines the settlement procedure followed in this case.

the Board's responsibility in controlling the prosecution of unfair labor practice cases is the right to settle such cases. Accord: *Wallace Corp. v. N.L.R.B.*, 323 U.S. 248, 253-254; *Local 282 Teamsters v. N.L.R.B. (J.J. White)*, 339 F.2d 795 (C.A. 2). And because a veto power in the hands of a party other than a respondent would deny the Board its right to settle cases, this Court and the Second Circuit have further held that a charging party has no right to block a settlement agreement. *Roselle Shoe, supra*, 111 U.S. App. D.C. 109, 294 F.2d 738; *J.J. White, supra*, 339 F.2d 795 (C.A. 2); cf. *Retail Clerks Union 1059 v. N.L.R.B.*, U.S. App. D.C. , 348 F.2d 369. But see *Marine Engineers' Beneficial Ass'n v. N.L.R.B.*, 202 F.2d 546 (C.A. 3), cert. denied, 346 U.S. 819; *Leeds & Northrup Co. v. N.L.R.B.*, F.2d (C.A. 3), 61 LRRM 2283. However, in cases where, as here, parties do object to a proposed settlement, this Court has held that the objecting parties are entitled to "either (1) a reasonable opportunity . . . to be heard on . . . [their] objections or (2) a presentation on the record of reasons for acceptance of the [settlement] stipulation as the basis for the [Board's] order notwithstanding . . . [their] objections . . ." *Roselle Shoe, supra*, 111 U.S. App. D.C. at 112, 294 F.2d at 741. Accord: *Retail Clerks Union 1059 v. N.L.R.B.*, U.S. App. D.C. , 348 F.2d 369, 370 (C.A.D.C.).

In this case the Board fully complied with both requirements set forth in *Roselle Shoe*. As shown in our Counterstatement (p. 5), following the execu-

tion of the settlement agreement by the Board's Regional Director and the changed unions, the Board issued a notice to all of the petitioners herein, directing them to show cause "why the Board should not approve the Settlement Agreement and issue a Decision and Order Quashing the Notice of Hearing" (J.A. 6). Thereafter, petitioners filed detailed answers opposing the settlement agreement (J.A. 7-23). The Board gave thorough consideration to petitioners' arguments, concluded that, though "weighty," they were "overbalanced" by important policy considerations (discussed below, part B), and explained its decision (J.A. 55-59). Thus, petitioners were given both a reasonable opportunity to present their objections and a full explanation of the Board's reasons for approving the settlement agreement.

Petitioners claim, however, that Section 10(k) of the Act, as interpreted by the Supreme Court in *N.L.R.B. v. Radio and Television Broadcast Engineers Union (CBS)*, 364 U.S. 573, required the Board to reject the settlement agreement in order to make a jurisdictional determination extending beyond the Ternstedt dispute to possible future disputes between the contending unions. We submit that *CBS* is inapposite to the case at bar.

In *CBS*, two unions representing two different units of CBS employees were engaged in a jurisdictional dispute over which unit should perform the work of providing lighting for television shows of the employer. When the technicians' union caused a work stoppage on a particular job because the disputed work had been assigned to members of the

stage employees' union, CBS filed an unfair labor practice charge under Section 8(b)(4)(D). After a hearing under Section 10(k), the Board held that the technicians' union was not entitled to the work under either an outstanding Board order or certification or under a collective bargaining agreement. In so holding, the Board followed its then current practice of refusing to make an affirmative award of work between disputing unions on the merits of their respective positions, and limiting its inquiry under Section 10(k) to whether the striking union had representational rights to the work under a prior Board order or certification, or under a collective bargaining agreement. Maintaining that the Board could not so limit its inquiry, the technicians refused to comply with the determination. In the ensuing unfair labor practice proceeding, the Board issued an order directing the technicians to cease and desist from striking to compel CBS to assign the disputed work to them. Accepting the technicians' contention that the Board had failed to make the kind of determination that Section 10(k) requires, the Second Circuit refused to enforce the Board's order (272 F. 2d 713). In agreement with the Second Circuit, the Supreme Court held that in determining disputes under Section 10(k), the Board must not "merely look at prior Board orders and certifications or a collective bargaining contract to determine whether one or the other union has a clearly defined statutory or contractual right to have the employees it represents perform certain work tasks" (364 U.S. at 579); but, employing "the stand-

ards generally used by arbitrators, unions, employers, joint boards and others wrestling with this problem" (at 583), it must "decide which of two or more employee groups claiming the right to perform certain work tasks is right and then specifically . . . award such tasks in accordance with its decision" (at 586).

From the foregoing statement of *CBS*, it is clear that that case and the one at bar involve distinctly separate issues. In *CBS*, the problem was one of defining the *kind* of determination the Board must make under Section 10(k) if it is to issue an order in a subsequent 8(b)(4)(D) proceeding directing the non-complying union to cease and desist from striking or threatening to strike in the jurisdictional dispute. Here, the problem is whether the Board can properly decline to make *any* determination under Section 10(k) when it has decided to dispose of the underlying unfair labor practice case without issuing such a cease and desist order. Accordingly, *CBS* is of no relevance in deciding the propriety of the Board's approval of the settlement agreement with Millwrights 1102.

While *CBS* does not deal with the issue presented here, other decisions have recognized that the Board is not obligated to render an affirmative award under 10(k) in every case where an unfair labor practice charge is filed under Section 8(b)(4)(D). For example, this Court has held that the Board is not required to make a determination where, upon preliminary investigation of the charge, there is no reason to believe that conduct in violation of Section 8(b)(4)(D) has occurred. *Herzog v. Parsons*, 86

U.S. App. D.C. 198, 181 F. 2d 781 cert. denied, 340 U.S. 810. Nor, as the Fifth Circuit has held, is a determination required where the dispute alleged in the charge is rendered moot by the completion of the work in question before a determination can be made. *Tip Top Roofers, Inc. v. N.L.R.B.*, 324 F. 2d 773; see also, *N.L.R.B. v. Local 101, Int'l Union of Operating Engineers*, 315 F. 2d 328, 330 (C.A. 10).

The instant case, we submit, presents but another situation where a determination under Section 10(k) is not required; for here, the settlement agreement between the Board's Regional Director and the charged unions terminated the particular jurisdictional dispute alleged in the charge. As noted in our Counterstatement (pp. 4-5), by entering into the settlement agreement, the charged unions withdrew their claim to the disputed work performed by Don Cartage at the Ternstedt plant and agreed not to engage in conduct violative of Section 8(b)(4)(D) to secure the work. Thus, the settlement agreement terminated the dispute on terms favorable to the complaining employer and union and thereby rendered the Ternstedt dispute moot. Indeed, as the Board stated in its decision (J.A. 59): "None of the opposing parties challenges this resolution as applied to the Ternstedt project, where the dispute arose. The point of the objections to the Settlement Agreement is that the Board should presently decide similar jurisdictional disputes which may arise in the future."

As we now show, the Board acted well within its discretion in declining petitioners' request that it

presently determine possible future disputes between the contending unions.

B. *In declining petitioners' request for a determination of future disputes, the Board properly exercised its discretion to limit its disposition in a jurisdictional dispute case to the particular dispute before it*

Since Section 10(k) requires the Board in any given case to determine only "the dispute out of which . . . [the alleged unfair labor practice] shall have arisen," whether the Board should at the same time decide similar disputes which might arise in the future is necessarily a question to be decided by the Board in its discretion on a case by case basis. See, e.g., *International Association of Machinists (J.A. Jones Construction Company)*, 135 NLRB 1402, 1411 ("our present determination [the first made pursuant to the Supreme Court's decision in CBS] is limited to the particular controversy which gave rise to these proceedings"); *Cement Masons Local 65 (Twin City Tile)*, 152 NLRB No. 148 (request for extension of award to employer's entire operation denied on ground that newly reconstituted Joint Board may be able to settle future controversies; *Sheet Metal Workers, Local 162 (Luster Lite)*, 151 NLRB No. 21 (request for extension to entire United States denied); *Omaha Carpenters District Council (Bel-Toe Foundation)*, 150 NLRB No. 94 (request for extension to employer's entire operation denied); *Plumbers Local 224 (Bernard Pipe Line)*, 152 NLRB No. 98 (award extended to entire area of employer's normal operation); *Ironworkers Local 272 (Pretress Erectors)*,

152 NLRB No. 21 (award extended to particular geographical area and employer's operation within area); *Plumbers Local 761 (Zaich Const.)*, 144 NLRB 133 (award extended to subsequent disputes involving same contractors on same project).

In this case, as previously noted, the Board exercised its discretion by declining petitioners' request for a determination at the present time of possible future disputes between the contending unions on the ground that the National Joint Board for Settlement of Jurisdictional Disputes, as recently reconstituted by an agreement signed at the White House, should first be given the opportunity to resolve any future disputes between the unions on a voluntary basis (J.A. 58). Cf. *Cement Masons Local 65 (Twin City Tile)*, 152 NLRB No. 148. Thus, the Board acted pursuant to the national policy of encouraging voluntary private settlements of jurisdictional disputes; for "Section 10(k) not only tolerates but actively encourages voluntary settlements of work assignment controversies between unions . . ." *Carey v. Westinghouse Corp.*, 375 U.S. 261, 266. See, *Report of the Joint Committee on Labor-Management Relations Pursuant to LRMA Section 403*, 80th Cong., 2nd Sess., Part F, at p. 19; *Ibid*, Final Report at p. 58. As Senator Murray said during the congressional debate on the Taft Hartley bill, "we are confident that the mere threat of governmental action [under Section 10(k)] will have a beneficial effect in stimulating labor organizations to set up appropriate machinery for the settlement of such controversies within their own ranks, where they properly should be settled." 2

Legislative History of the Labor Management Relations Act, 1947, at 1046 (93 Cong. Rec. 4035).

In order to provide such machinery, i.e., "an agreed upon method for the voluntary adjustment" of disputes in the construction industry under Section 10 (k), unions affiliated with the Building Trade Department of the A.F. of L. and contractors in the industry, in 1948, established the National Joint Board for Settlement of Disputes (hereinafter referred to as the Joint Board). Its procedures are binding on the unions affiliated with the Department and on contractors who elect to bind themselves. See Strand, *Jurisdictional Disputes in Construction: The Causes, The Joint Board, and The NLRB*, Chap. 6 (Washington State University Press, 1961). As the Board noted in its decision (J.A. 56-58), on February 2, 1965, after the completion of the hearing in this case and of the work in dispute at the Ternstedt project, the Building and Construction Trades Department, AFL-CIO, of which the parent Internationals of Millwrights 1102 and Riggers 575 are members, and various contractor associations, signed an agreement at the White House reconstituting, effective April 1, 1965, the Joint Board. The new agreement was entered into for the purpose of perfecting the machinery of the Joint Board; and to that end, it instituted changes calling for, among other things, the establishment of a new Appeals Board, and special recognition by the Joint Board in settling jurisdictional disputes of such factors as efficiency and economy of operation (J.A. 56-57).

Considering the establishment of the new Joint Board in light of the public policy of encouraging voluntary private settlements of jurisdictional disputes, the Board thus decided that, for the time being, the new Joint Board should be given the opportunity to resolve any future disputes between Riggers 575 and Millwrights 1102 on a voluntary basis. To do otherwise, the Board concluded (J.A. 59), "would . . . [undercut] the new Joint Board at the very beginning of its operations and . . . [lessen] its chances of success." Cf., *Sheet Metal Workers' Union v. Aetna Corp.*, 246 F. Supp. 236, 240 (D. Mass.).¹⁷

Moreover, the Board noted that all concerned would stand to benefit from its decision giving the new Joint Board an opportunity to resolve future disputes (J.A. 58-59). Thus, the employers—who had not signified their adherence to the new agreement—might find the procedures of the new Joint Board more acceptable than the old, and hence, might then be willing to submit disputes to the new Joint Board. Or if they should refuse to make this submission, they might find that a Joint Board award upon submission by the contending unions is acceptable to them. And as the Board further noted, the Board would benefit from a Joint Board award even if it is ultimately required to determine future disputes between the unions; for one of the relevant factors the Board considers in determining a dispute is an award by a

¹⁷ As the Court stated in *Sheet Metal Workers*, at 240, "An agreement entered into so hopefully at the White House . . . is entitled to a better opportunity to prove its worth in the industry."

joint board in the same or related cases. See, e.g., *International Association of Machinists (J.A. Jones Construction Company)*, 135 NLRB 1402, 1410, 1411; see also, *Carey v. Westinghouse*, 375 U.S. 261, 271.

Finally, the Board assured the parties that its decision "is not irrevocable," adding that "if the new Joint Board is unable to resolve the jurisdictional dispute on the broad basis desired, the Board's procedures will then be available for doing so" (J.A. 59). Thus, we submit, the Board's decision respecting possible future disputes between the contending unions effectively accommodate both major objectives underlying the statutory scheme: it encourages the parties to use a voluntary method of settlement as contemplated in Section 10(k); but it also assures the parties permanent resolution of any future disputes between the unions in the event such disputes are not effectively resolved in the first instance by resort to the new Joint Board.

Nevertheless, petitioners argue that the Board was not entitled in this case to decline their request for a determination embracing future disputes. First, petitioners contend (Br., pp. 47-52) that in declining to make such a determination the Board acted in derogation of policies adopted by it in prior cases. As we noted above, however, whether or not a determination of future disputes should be made in any given case is a question to be decided according to the particular circumstances presented.¹⁸ In this case, as noted, the

¹⁸ In *International Union of Operating Engineers (Frank P. Badolato & Son)*, 135 NLRB 1392, 1401, relied on by Don

Board was presented with a special problem occasioned by the execution of the new Joint Board agreement at the time the jurisdictional dispute was pending for a determination. In short, the Board had to determine, as a matter of policy, whether it should make a decision extending to possible future disputes or whether, pursuant to the policy encouraging private settlement, it should, for the time being, give the new Joint Board a chance to resolve such disputes. Thus, while it is true, as petitioners note, that the Board in similar cases has often made jurisdictional determinations embracing future disputes, those cases did not involve the unique circumstances presented in this case.

Petitioners also contend (Br. p. 53) that the Board was further obligated to make a prospective determination in this case because the parties have stipulated on the record that the Board "should not limit its determination to the Ternstedt situation but should make a determination awarding the work in dispute to all future job disputes where Riggers Local 575 and Millwrights Local 1102 are operating in conjunction with one another in their respective geographical areas." In making this contention, however, petitioners fail to recognize that as the charges filed with the Board alleged only the particular dispute at the Ternstedt project, the notice of hearing issued herein accordingly was limited to that particular dispute (J.A. 186, 195, 202, 209, 218, 226). And since, as we noted,

Cartage in its brief here, p. 47, the Board said: "We believe that the scope of the determination in 10(k) cases should be decided upon the basis of the facts in each case."

a decision to extend the scope of a jurisdictional determination relating to a particular dispute to possible future disputes is necessarily one only the Board can make, the parties' *stipulation* obviously is not binding on the Board, but must be interpreted merely as a *request* for a prospective determination which the Board, within its discretion, was free to decline.

Contrary to petitioner's additional assertion that the record developed in this case was wasted as a result of the Board's refusal to make a prospective determination, we note, as the Board suggested in its decision (J.A. 59), that "the Board, unions, and employers generally will save many times over the money expended on the hearing in this case if the new Joint Board will satisfactorily resolve, and therefore make unnecessary, the submission of even a small proportion of the jurisdictional dispute cases that would otherwise come before the Board." Moreover, if the new Joint Board is unable to resolve future disputes between the unions on the broad basis petitioners desire and the Board, therefore, is ultimately required to make such a determination, the parties will be able to stipulate that the record compiled in this case will be used in a future proceeding under Section 10(k) in lieu of a new record.

In conclusion, we submit that the Board's decision to defer at the present time to the new Joint Board, does not, as petitioners suggest, increase the likelihood of continued strife between the contending unions, but to the contrary, tends to lessen the possibility of such strife. As previously noted, both Riggers 575 and Millwrights 1102 already are obligated to

submit their disputes to the Joint Board. Such submission would tend to lessen the possibility of future strife; for, as the Act contemplates, the most enduring solution to jurisdictional disputes naturally would be achieved through appropriate machinery established within labor's own ranks. In any event, as the Board noted, the Board's procedures will be available for resolving the unions' disputes, if the parties are unable to have such disputes permanently resolved through submission to the new Joint Board. In the meantime, petitioners will be fully protected from further strikes or picketing, either by injunctive relief secured under Section 10(l) of the Act following a charge alleging that such conduct has occurred, or by a suit under Section 303 of the Act for money damages sustained therefrom.

CONCLUSION

For the foregoing reasons, the Board respectfully submits that the petitions to review and set aside the Board's order should be denied.

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National Labor Relations Board.

February 1966.

APPENDIX

1. Relevant portions of the National Labor Relations Act not reproduced in petitioners' brief are as follows:

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

SEC. 303. (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8 (b) (4) of the National Labor Relations Act, as amended.

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) may sue therefore in any district court of the United States subject to the limitations and provisions of section 301 hereof without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

2. Relevant portions of the Rules and Regulations and Statements of Procedure, Series 8, as amended, not reproduced in petitioners' brief are as follows:

* * * * *

SEC. 101.7 *Settlements*.—Before any complaint is issued or other formal action taken, the regional director affords an opportunity to all parties for the submission and consideration of facts, argument, offers of settlement, or proposals of adjustment, except where time, the nature of the proceeding, and the public interest do not permit. Normally prehearing conferences are

held, the principal purpose of which is to discuss and explore such submissions and proposals of adjustment. The regional office provides Board-prepared forms for such settlement agreements, as well as printed notices for posting by the respondent. These agreements, which are subject to the approval of the regional director, provide for an appeal to the general counsel, as described in section 101.6, by a complainant who will not join in a settlement or adjustment deemed adequate by the regional director. Proof of compliance is obtained by the regional director before the case is closed. If the respondent fails to perform his obligations under the informal agreement, the regional director may determine to institute formal proceedings.

* * * *

**SUBPART F—JURISDICTIONAL DISPUTE CASES
UNDER SECTION 10(K) OF THE ACT**

SEC. 101.31 Initiation of proceedings to hear and determine jurisdictional disputes under section 10(k).—The investigation of a jurisdictional dispute under section 10(k) is initiated by the filing of a charge, as described in section 101.2, by any person alleging a violation of paragraph (4)(D) of section 8(b). As soon as possible after a charge has been filed, the regional director serves on the parties a copy of the charge together with a notice of the filing of such charge.

SEC. 101.32 Investigation of charges; withdrawal of charges; dismissal of charges and appeals to Board.—These matters are handled as described in section 101.4 to 101.7, inclusive. Cases involving violation of paragraph (4)(D)

of section 8(b) in which it is deemed appropriate to seek injunctive relief of a district court pursuant to section 10(l) of the act are given priority over all other cases in the office except other cases under section 10(l) of the act and cases of like character.

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONER
(DON CARTAGE, et al)

UNITED STATES COURT OF APPEALS
For the District of Columbia

JOHN QUINN AND RIGGERS AND
MACHINERY ERECTORS, LOCAL
575,
Petitioners,
vs.

No. 19,673

NATIONAL LABOR RELATIONS
BOARD,
Respondent.

DON CARTAGE COMPANY, a Michigan
corporation, and
MICHIGAN CARTAGEMEN'S
ASSOCIATION, HEAVY HAULERS'
DIVISION,
Petitioners,
vs.

No. 19,686

NATIONAL LABOR RELATIONS
BOARD,
Respondent.

On Petitions to Review and Set Aside An Order of the
National Labor Relations Board

United States Court of Appeals
for the District of Columbia Circuit

FILED APR 20 1966

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,673

JOHN QUINN AND RIGGERS AND MACHINERY ERECTORS,
LOCAL 575, PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

No. 19,686

DON CARTAGE COMPANY, a Michigan corporation, and
MICHIGAN CARTAGEMEN'S ASSOCIATION, HEAVY HAULERS'
DIVISION, PETITIONERS

vs.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

SUPPLEMENTAL AND REPLY BRIEF FOR PETITIONERS DON
CARTAGE, ET AL

ADDITIONAL STATEMENT OF FACTS

As set forth in Petitioner Don Cartage Company's original Brief herein, in the jurisdictional statement thereof, (pages 2-13), Petitioner Don Cartage Company and the Michigan Cartagmen's Association, Heavy Haulers' Division, (hereinafter called Employers) filed on September 10, 1965 a "Petition to Set Aside Order of the National Labor Relations Board and for Direction by the Court to the Board to Supplement its Decision and Order in Accordance with the National

Labor Relations Act as Amended", to review an Order of the National Labor Relations Board dated August 16, 1965.

On November 8, 1965, the National Labor Relations Board filed a Motion for Leave to Adduce Newly Discovered Evidence based on the alleged proposition that the Employers had agreed to be bound to the procedures of the National Joint Board for Settlement of Jurisdictional Disputes. It was the Board's further position that under Section 10(k) of the National Labor Relations Act as amended that if the Employers had in fact agreed upon Joint Board procedures, such agreement would be a voluntary method of settling the jurisdictional dispute rendering the Board without jurisdiction.

Over vigorous objection by the Employers, this Court, on January 18, 1966, granted the Board's aforementioned Motion and remanded the case to the Board for the purpose of adducing additional evidence in relation to the alleged agreement to be bound by Joint Board procedures.

Thereafter, a remand hearing was held on January 27, 1966 through February 2, 1966. A 980 page additional record was compiled and all parties filed detailed briefs analyzing the testimony, including a 50 page brief by the Employers.

The significant thing about the remand hearing was that after all of this tremendous effort, it became quite clear that the Employers were quite correct in opposing the remand hearing in this Court, for all five members of the

Board finally agreed as a fact that the Employers were not and are not bound to Joint Board procedures.

In addition to establishing that the Employers have not agreed to be bound by Joint Board procedures, the record on remand clearly and unequivocably establishes that the Employers will not submit to the jurisdiction of the Joint Board even as reconstituted by the allged agreement referred to in the Board's original opinion dated February 1, 1965 (Tr 4765).

Even more significant is the brief filed by Millwrights Local 1102 following the remand hearing. Though Local 1102 allegedly signed the ex parte so-called settlement agreement in May, 1965, in its brief filed on February 8, 1966 with the Board, it urges that the Board either find that the Employers have agreed to be bound to Joint Board procedures or, finding that the Employers have not so agreed, to make a determination of the dispute. This is the same position that Millwrights Local 1102 took on the second day of the original hearing as reported at pages 53 through 55 of the Employers' initial brief. Millwrights Local 1102 on February 8, 1966, was arguing against upholding the Board's erroneous decision of August 16, 1965.

Board member Howard Jenkins, Jr., the original dissenter who has consistently held that the Board should make a determination of the dispute, agreed that the Employers had not agreed to Joint Board procedures. In a partial

dissent in the supplemental decision dated February 18, 1966, Board member Jenkins again stated that it was in the interests of labor peace to make a determination. Thus, he recommended to this honorable Court that the case be returned to the Board, "for a determination of the dispute and an award in accordance therewith".

Tell-tale evidence that the Board's refusal to make a determination of this dispute is in fact creating labor unrest in the Specialty Rigging Industry in Michigan. The fact is that since the original Don Cartage hearing, numerous charges have been filed alleging jurisdictional disputes between Millwrights Local 1102 and Riggers Local 575. Evidence of this is Riggers Remand Exhibit 22, introduced at the remand hearing which is a compilation of the then-pending number of jurisdictional disputes between these two locals that had been filed by the Employers since 1951. Exhibit 22 is reproduced in the Appendix hereto. Significantly, ten have been filed since the close of the original hearing in this case.

The fact of the matter is that following the remand hearing, three additional cases have been filed, to-wit, Case No. 7-CD-155, Case No. 7-CD-159, and a case not yet numbered, all involving employer members of the Michigan Cartagmen's Association, Heavy Haulers' Division. And on March 7, 1966, the Board issued a notice of a 10(k) hearing involving a jurisdictional dispute between Millwrights Local 1102 and Riggers Local 575 and an employer

member of the Association. Furthermore, there are two additional notices of 10(k) hearings issued on March 8, 1966, involving employer members of the Association and Riggers Local 575 and another Millwrights Local in Alpena, Michigan. Labor war exists as a matter of fact, because the Board refuses to perform its duty under Section 10(k) and make a determination of the disputed work for all future disputes in the geographical area where Riggers Local 575 and Millwrights Local 1102 work in conjunction with each other.

SUMMARY OF ARGUMENT

As Petitioners Don Cartage Company and the Michigan Cartaglemen's Association, Heavy Haulers' Division, have initially filed a brief in support of their Petition herein on February 25, 1965, the National Labor Relations Board has responded and filed an answering brief. Nothing in the answering brief of the Board changes the obvious law that the Board was under a mandate, pursuant to Section 10(k) of the National Labor Relations Act as amended, the decision of the United States Supreme Court in NLRB vs. Radio and Television Broadcast Engineers Union Local 1212, IBEW, 364 US 573 (CBS), and the stipulation of the parties on this record to make a determination of the jurisdictional dispute between Millwrights Local 1102 and Riggers Local 575 in the geographical area where the two unions work in conjunction with each other.

The Board does not have the discretion not to decide a jurisdictional dispute when there is reasonable cause to believe that there has been a violation of Section 8(b)(4) (D) of the Act, of which there is no question here. Even if the Board did have this discretion, it has clearly abused such discretion by not even following its own standard.

This particular point was discussed at pages 50 through 52 of the Employers' initial brief. At the risk of being redundant, we again call the statement made by Professor Lewis L. Jaffe in his excellent new treatise, Jaffe, Judicial Control of Administrative Action, at page 588 (Little, Brown & Company, 1965) wherein Professor Jaffe, in discussing discretion says:

"...Furthermore, alleged inconsistency is closely related to a pattern of reasons which supports the majority's decision. Discretion, however valuable, can be a facade for inadequate thinking, failure to face issues, hidden expediences or downright dishonesty. These vices multiply in large, overworked agencies where the power of decision may be fractionated and diffused..."

On November 9, 1965, almost two months after the Petition for Review was filed in this case, and a day after the Board filed a Motion to Adduce Newly Discovered Evidence in this case, the Board again enunciated its long-standing rule that in jurisdictional matters, it would make a jurisdictional award going to the entire geographical area involved in this dispute if there is evidence that there is a continuing dispute. Plumbers Local 562 and Local 318,

United Association of Journeyman and Apprentices et al,
(Layne Western Company) 155 NLRB No. 66. (See pp. 48-51
of Employers' initial brief for previous Board cases so
holding.)

The significance is that the Board has set the standard that if the dispute is "of a recurring nature or one of long standing" then the Board will make an award covering the entire geographical area.

This record is replete with evidence and the Board has in effect so found, that this is a long-standing dispute and is one of a recurring nature, so recurring that on March 7, 1966, the Board has again issued another 10(k) notice involving the same Employers, involving a member of the Employer Association, and Millwrights Local 1102 and Riggers Local 575 (see NLRB Case No. 7-CD-155).

The only reason the Employers choose to file a reply and supplemental brief as permitted by Court order and Court Rules is that major events have occurred since the Employers filed their initial brief which serve only to buttress the obvious, to-wit, the Board has a mandatory duty to make a determination of the jurisdictional dispute between Millwrights Local 1102 and Riggers Local 575 in the Michigan geographical area.

The remand hearing held January 27 through February 2, 1966, established the three propositions: (a) The Employers have not agreed to invoke joint Board procedures; (b) The Employers have emphatically stated that they will not agree

to invoke Joint Board procedures; and (c) That the dispute is a long-standing one that is recurring and continuing to this very day.

The Millwrights 1102 allegedly signed the ex parte alleged settlement agreement on May 19, 1965 (J.A. 4). Yet, by a brief dated February 8, 1966, (filed after the remand hearing) Millwrights Locall 1102 asked the Board to quash the Notice of Hearing on the basis that the Employer has agreed specifically to Joint Board procedures, or, in the alternative, to "award the work in dispute to Millwrights". Nowhere in the Millwrights' brief filed following the remand hearing does Millwrights Local 1102 even suggest that the Board adhere to its initial opinion issued in this matter on August 16, 1965. In effect, Millwrights Local 1102 is reverting to the position it took at the second day of the hearing in this case as set forth at pages 53 to 55 of the Employers' initial brief, namely, that the labor Board make a determination of the disputed work for all future work in the geographical area involved.

On February 18, 1966, the Board issued a supplemental decision in this case wherein all five members of the Board agreed and found as a matter of fact based upon the 980 page record that the Employers had not agreed to be bound by Joint Board procedures.

Although a majority of the Board deliberately ignored the remand order of this Court dated January 18, 1966 and made no recommendations to the Court, Board member Howard

Jenkins, Jr., carefully observing the terms of the Court's January 18 order, recommended to the Court that "it return the case to the Board for a determination of the dispute and an award in accordance therewith". Mr. Jenkins based his recommendation on the correct position that he took in the original opinion, namely, that the Board had an absolute duty to make a determination of the jurisdictional dispute between Riggers 575 and Millwrights 1102 in the Michigan geographical area.

The Millwrights 1102-Riggers 575 jurisdictional dispute in Michigan is a recurring one which continues to this very day.

The Board filed its Answering Brief on February 25, 1966 with this Court, seven days after the Board's supplemental opinion and some twenty-three days after the remand hearing had been concluded and some sixteen days after the parties had filed briefs, yet the Board chose not to even mention the findings of the remand hearing or even to discuss it. The absence of such discussion in the Board's answering brief can only be construed to mean that the Board obliquely recognizes that its actions here were contrary to Section 10(k) (the mandate of Congress) and the CBS case; the Board was acting contrary to law. After all, Joint Board procedures are no longer involved because the Board itself has found that the Employer is not bound by Joint Board procedures and the record shows that he will not submit to Joint Board procedures. The Board then proceeds in its brief to state that

the majority decision not to decide would reduce labor strife, that there were other remedies such as damage suits available, and that the Board does not have to pay any attention to the requests of the parties on the record. Riggers Remand Exhibit 22 is illustrative of the fact that labor strife has not been reduced, particularly in view of the fact that there have been nine jurisdictional disputes brought to the Board since the August 16, 1965 decision. The damages do not solve a long-standing and recurring jurisdictional dispute. Furthermore, it was the Board's own agent who elicited the agreement that based on the Board's own long-announced standard, that the award should apply to the entire geographical area where Millwrights Local 1102 and Riggers Local 575 work in conjunction with each other.

In its answering brief, the Board also makes several misstatements concerning the nature of 10(k) and its applicable rules and regulations. The Board would have this Court believe that all Section 10(k) is another unfair labor practice. This is not true and begs the question. The Employer took great pains, at pages 38 - 42 of the initial brief to explain the legislative history of Section 10(k), establishing that 10(k) is compulsory arbitration by an agency of the government of the United States, to-wit, the National Labor Relations Board, of a jurisdictional dispute. This compulsory arbitration is invoked when there is reasonable ground to believe that an unfair labor practice has been committed, to-wit, 8(b)(4)(D), and the parties have not settled

the dispute nor is there an agreed-upon method for the voluntary adjustment of the dispute. Absent settlement and an adjustment, in the presence of an alleged unfair labor practice, the Board, under Section 10(k) and CBS must make a determination, just as an arbitrator must decide. The Board itself, as explained at pages 56-58 of the Employers' original brief, has adopted separate rules for 10(k) hearings, and contrary to the footnote 16 at page 13 of the Board's brief, the same settlement provisions that may apply to unfair labor practices do not apply to Section 10(k) after hearing.

The truth of the matter is that there is no unfair labor practice to be disposed of until after the Board has made a determination and an assignment of the disputed work and the losing union refuses to abide by the assignment.

On February 9, 1966, the Third Circuit announced its decision in Leeds and Northrup Company vs. NLRB, 53 Labor Cases, Paragraph 1106, wherein the Third Circuit again criticizes the Board's procedure in making ex parte settlements over the objection of the charging party and in fact limited the Board's right to do so. As previously stated in our initial brief at pages 56-58, even this Circuit has only permitted settlement agreements when an adversary proceeding is involved and the agreement was made before hearing. Here, 10(k) hearing, by admission of all parties, is a non-adversary proceeding, for it is compulsory arbitration. Furthermore, here the hearing was completed. Finally, Millwrights

1102, who entered into the alleged settlement agreement, have now, by a brief of February 9, 1966, virtually repudiated the agreement.

Thus, not only does the law require it, but the occurrence of these major current events since December 30, 1966 alone make it an absolute necessity for the Board to make a jurisdictional determination covering all future work in the geographical area where Millwrights 1102 and Riggers 575 work in conjunction with each other.

ARGUMENT

I.

THIS IS A CONTINUING RECURRING JURISDICTIONAL DISPUTE AND UNDER THE BOARD'S PREVIOUS AND CURRENT STANDARDS, FOLLOWING CBS, THE BOARD MUST MAKE A JURISDICTIONAL DETERMINATION COVERING GEOGRAPHICAL AREA INVOLVED.

As set forth at pages 47-51 of the Employer's initial brief herein, the National Labor Relations Board, following the mandate of CBS has consistently held to the present day as a standard for all to follow as a guide, that if a dispute is a recurring dispute or one of long-standing, the Board will make and is obliged to make an area-wide determination or assignment of all future disputes.

The Board, in its brief at page 14, cites two cases for the proposition that the Board does not always make a jurisdictional award for a geographical area involved. Sheet Metal Workers Local 162 (Lusterlite), 151 NLRB No. 21; Omaha Carpenters District Council (Bel-Toe Foundation) 150 NLRB No. 94. Neither the Lusterlite case or the Bel-Toe Foundation case stand for the proposition cited by the Board in its Brief. The fact of the matter is that in Bel-Toe Foundation the Board did make a jurisdictional award between the two competing unions "in any area where their (the unions) geographical jurisdictions coincide". In Lusterlite it is true that the Board did not make a jurisdictional award extending to the entire United States, but instead made an award extending to Sacramento, California and Tacoma,

Washington, as those were the only two areas where there were disputes among the unions involved.

There is no question that if the dispute is a long-standing and/or recurring one, the Board will make an entire geographical area determination for all future work.

The long-standing history of the dispute is established by such reported Board decisions as Millwrights Local 1102, et al (Don Cartage Company), 121 NLRB 101 (1958), Millwrights Local 1102 (General Riggers & Erectors, Inc.), 127 NLRB 26 (1961). If there was any question that this is a dispute of long standing and a recurring dispute, the remand hearing cleared it up very quickly.

The long-standing and presently recurring dispute was set forth in Rigger Remand Exhibit 22, introduced and received into evidence at the remand hearing. (Exhibit 22 is attached to this Brief as Employer's Appendix A) The Exhibit lists nineteen jurisdictional disputes between Millwrights Local 1102 and Riggers Local 575. This Exhibit 22 was prepared by the NLRB's Regional Director for the Seventh Region on February 2, 1966. Since February 2, 1966, there have been four other jurisdictional cases that are now pending before the Board in Detroit, cases No. 7-CD-155, 7-CD-156, 7-CD-159 and one unnumbered case (filed March 9, 1966) which involve these two unions. Of these, eighteen, including the seven pending, have occurred in the last three

and one-half years. Need there be more evidence?

On March 7, 1966, the Regional Director in Detroit issued notice of a 10(k) hearing to commence on March 27, 1966 between these two local unions and a member of the Employer association. In addition, the Regional Director in Detroit on March 8, 1966 served notice on the association's counsel that there will be two other 10(k) hearings involving Millwrights and Riggers Local 575 with another Local of the Millwrights in Alpena, Michigan in April, 1966.

The Board, in its Brief by citing Tip-Top Roofers, Inc. vs. NLRB, 342 F 2d 773, suggests that if a dispute is moot, the Board does not have to determine it. But there was no evidence in the Tip-Top case that the dispute was a recurring one. There is plenty of evidence here that this is a recurring dispute.

Furthermore, the Board says that the charge filed in this case involved only the Tettstedt dispute. This again begs the question. This is the nature of 10(k) hearings. The charge that gives birth to a 10(k) hearing results from a given single jurisdictional dispute incident. Thus, in each of the following cases, the 10(k) hearing originated from a charge involving a single jurisdictional dispute incident. International Union of Operating Engineers, Local 66 (Frank P. Badolato & Son), 135 NLRB 1936 (1960); Plumbers & Pipefitters Union (Bernard Pipeline Company), 152 NLRB No.

98 (1965); Association of Bridge, Structural and Iron Workers Local 474 (Structural Concrete Corporation), 146 NLRB 152 (1964); Local Union No. 272, et al. (Free Prestress Erectors, Inc.), 152 NLRB No. 221; Local Union No. 68, Wood, Wire and Metal Lathers (State Lathing Company, Inc.), 153 NLRB No. 90 (July 1, 1965).

Yet, in all of these cases, because it was a long-standing and/or recurring dispute, the Board made an award affecting all future jurisdictional disputes in the geographical area involved.

The Employer takes the position that under Section 10(k), CBS and the stipulation of the parties on this record, the Board has no discretion herein, but has the absolute duty to make an award of the work involved in the geographical area involved. But even if the Board did have the discretion, it certainly abused its discretion ... in view of this recurring dispute. The Board's reliance on this so-called doctrine of "discretion" is only "a facade for" ... failure to face issues ..." There is a continuing jurisdictional dispute in Michigan between Millwrights Local 1102 and Riggers Local 575 affecting innocent employees that needs an "effective" decision of the Board.

AS THE BOARD HAS NOW FOUND THAT THE EMPLOYER IS NOT BOUND BY JOINT BOARD PROCEDURES, THE BOARD HAS NO CHOICE, CONSISTENT WITH THE OPINION OF MEMBER STIMPSON, BUT TO MAKE A DETERMINATION OF THE DISPUTE IF LABOR PEACE IS TO BE ACCOMPLISHED.

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Over vigorous protests of the Employers, this honorable Court, on January 18, 1966, issued its order remanding the case back to the Board to adduce newly discovered evidence.

It seems quite clear from this Court's January 18, 1966 remand order that this Court was indicating to the Board that if it found that the Employer was not bound by Joint Board procedure, then the majority of the Board might reconsider its original decision. . . . determination. Perhaps the Court did not . . . completely in mind, but it certainly gave the Board . . . to correct its original error.

But the Board blithely ignored the opportunity to correct its original error, despite the fact that following the remand hearing both unions, Riggers Local 575 and Millwrights Local 1102 (the union which signed the original stipulation), as well as the Employers, urged the Board that if it found that the Employers were not bound by Joint Board procedures, to make a determination of this dispute in the geographical area involved.

This cannot be described in any way except irresponsibility, considering all of the facts in this case. Nothing that counsel for the Employer can write herein can be as convincing of the majority's error in not making a jurisdictional award covering the geographical area involved as the short

and concise and vivid partial dissent of Board member Howard Jenkins, Jr. It is recalled, as discussed in the Employer's initial Brief at pages 34-36, that Board Member Jenkins in the original opinion believed strongly that the Board should make a geographical determination of the dispute. Board Member Jenkins' partial dissent to the Supplemental Decision is set forth in full in Employer's Appendix B attached here-to.

The key to Board Member Jenkins' partial dissent is that there cannot be "labor peace in this area" until the Board makes "an effective decision." This is certainly true here.

THE DECISION AND ACTIONS OF MR. AND MRS. LEIN ARE UNSUPPORTED IN LAW AND CONTRARY TO THE BOARD'S ADDUCED STILL EXISTING STIPULATION OF THE PARTIES. IT IS REQUESTED HERE THAT THE BOARD SHOULD MAKE A GEOGRAPHICAL DETERMINATION

At pages 53-55 of the Employer's initial Brief, the Employer, by literal quotations from the record made in the regular hearing, clearly established that all the unions involved, and the Employer itself, agreed that the Board should make an assignment of work in the geographical area in Michigan where Michigan Building Trades Local 1102 and Riggers Local 575 work in conjunction with each other.

Now the Board says, in effect at page 18 of its Brief that this agreement on the record on the second day of

this marathon jurisdiction . . . is not in any way bind-
ing nor should it be recognized in any way by the National
Labor Relations Board.

The facts, as developed in the record in the original hearing, and the developments which have followed as a result of the remand hearing, thoroughly show that if the Board is claiming that it has no discretion to ignore such a stipulation on the record, this is the type of discretion that Professor Davis and Professor Caffe in any future treatises they may write on administrative law should use as a classic example of abuse of administrative discretion. The Board is acting contrary to the facts. To begin with, the Employer was remiss in his duty to this Court in its initial Brief in pages 53 and 55 in not explaining what led up to the stipulation. At page 63 of the original record on file with this Court, the hearing officer, a Board Agent, actually solicited the agreement of all parties made on this record that the Board make a determination of the jurisdictional dispute covering future disputes between Millwrights Local 1102 and Riggers Local 575 in the geographical area wherever the unions work in conjunction with each other. (J.A. 86)

Furthermore, as set forth in full in the Joint Appendix at pages 24-26, the Employer association involved here petitioned to intervene in this hearing. It is quite clear from the tenor of the petition that the association was

attempting to get an area-wide determination. It was a Board Agent, the Regional Director for the Seventh Region, that granted the petition to intervene.

Subsequently, it is true that Millwrights Local 1102 did enter into an ex parte agreement attempting to settle this matter, but then came the remand hearing, and following the remand hearing, Millwrights Local 1102 in effect repudiated the so-called settlement agreement in its supplemental brief which it filed with the National Labor Relations Board on February 8, 1966. In Employer's Appendix C attached here-to, the Employer has reproduced in full the last two summary pages of the Millwrights' Brief. It is quite clear from this summary that the Millwrights have virtually repudiated the so-called settlement agreement that they signed on May 19, 1965 by their Brief. The Employer in their Brief, asked the Board to find that the Employer was bound by Joint Board procedures and in the absence of finding such, asked the Board to make an assignment of the work to Millwrights, members of Millwrights Local 1102. Likewise, the Brief of the Detroit Building Trades Council makes no argument in support of the Board's original decision.

Add it up: (1) The Board announced standards that in cases of long-standing and/or recurring it will make a geographical award for future disputes, and all the parties entered into the expense of a protracted 10(k) hearing rely-

ing on these standards; (2) Board Agent permits intervention of Employer association representing employers working the geographical area; (3) Board Agent — Haring Officer — elicited stipulation by parties that determination is to be for all future work in geographical area involved; (4) Parties so stipulating on record; (5) Signer of ex parte settlement agreement — Millwrights Local 1102 in brief following remand hearing asking for determination of assignment of disputed work in the absence of finding that Employer is not bound by Joint Board procedures; (6) The Board finding that the Employer is not bound by Joint Board procedures.

It is just plain simple arithmetic that if the Board ever had any discretion here, which the Employers maintain it did not, under CBS, it abused it in the action that it has taken in this matter.

IV.

AS THE ALLEGED AGREEMENT OF MAY 19, 1965 IN EFFECT HAS BEEN REPUDIATED BY MILLWRIGHTS, THERE IS ABSOLUTELY NO BASIS FOR AUGUST 16, 1965 BOARD DECISION

At the risk of being redundant, we call the Court's attention to Employers' Appendix C, which are the concluding paragraphs following the remand hearing. It is quite clear from this summary that Millwrights 1102 wants the Board either to find that the Employers are bound to Joint Board procedures because they have so agreed, or, if the Board does find that the Employers are bound, the Millwrights want the Board to make a jurisdictional determination.

As we have already said in this brief, and at pages 53-55 of the Employer's initial brief, Millwrights 1102 agreed on this record that the Board should make a jurisdictional determination for all future disputes covering this geographical area where Millwrights 1102 and Riggers 575 work in conjunction with each other.

The only foundation for the Board's decision of August 16, 1965 was the fact that Millwrights Local 1102 entered into an ex parte alleged settlement agreement dated May, 1965. This is the only possible basis for the majority decision, but by brief dated February 9, 1966, Millwrights 1102 have in effect repudiated the May 19, 1965 agreement and reverted back to their original stipulation on this record.

It also should be noted that the majority of the Board, when it issued its supplemental decision on

February 18, 1966, knew of this repudiation and yet the majority sat blithely by and did nothing that this Court's order would have permitted it to do to modify or reverse its original August 16, 1965 decision.

Since the very foundation for the Board's decision made August 16, 1965 has been destroyed, this Court has no alternative but to follow Board member Jenkins' recommendations to the Court "that it return the case to the Board for a determination of the dispute and an award in accordance therewith".

V.

AS BOARD FOUND THAT EMPLOYER IS NOT BOUND TO JOINT BOARD AND EMPLOYER WILL NOT GO TO JOINT BOARD, THERE IS ABSOLUTELY NO BASIS FOR THE MAJORITY DECISION IN THIS ACTION AND THE BOARD SHOULD THEREFORE MAKE A GEOGRAPHICAL JURISDICTIONAL DETERMINATION.

On several occasions in its brief, the Board, based upon the majority opinion of August 16, 1965 decision, states that the reason it has referred to the determination of the jurisdictional dispute in a geographical area involved is that pursuant to an agreement dated February 2, 1965 (which these Employers were not a party to), the National Joint Board for Settlement of Jurisdictional Disputes was reconstituted and "should be given the opportunity to resolve" this dispute.

Prior to and subsequent to August 16, 1965, the Board had always held, as a matter of law, that the Joint Board for the settlement of jurisdictional disputes is not a voluntary method of adjustment if the Employer has not specifically agreed to be bound thereto, even though the union

may have so agreed. (See pp. 47-52 of Employers' initial brief.)

The supplemental decision of the Board following the remand hearing issued on February 18, 1966 found that the Employers here have not agreed to be bound by Joint Board procedures. Even more important is the fact that the record as developed in the remand hearing clearly establishes that the Employers here will not submit any disputes in the future to the Joint Board nor will they become bound to the Joint Board (see testimony of R. Royce Richards, President of Don Cartage Company, member of the labor negotiation committee of the Michigan Cartagemen's Association, Heavy Haulers' Division, and member of the Board of Directors of the Michigan Cartagemen's Association, Tr. 5765, reproduced at Employers' Appendix, attached hereto.)

It was this position, as set forth by Mr. Richards, that Board member Howard Jenkins, Jr., in his partial dissent on February 18, 1966 was referring to when he stated:

"This attitude, on the evidence now before us, can be expected to persist, though undercutting a principle reason for the Board's original refusal to determine the dispute, namely, the hope that the Joint Board would provide a channel for resolution of this dispute."

We again remind the Court, as stated in the Employers' initial brief (pp. 33-45), that Section 10(k) is mandatory, that upon finding reasonable cause to believe a violation of 8(b)(4)(D) exists, and upon finding that there is no agreed-upon voluntary method of adjustment, or that the parties have in fact adjusted the dispute, the Board is

"empowered and directed to hear and determine this dispute" under Section 10(k) of the Act. Section 10(k) does not provide for what the Board may "hope" may happen. Section 10(k) is compulsory arbitration.

The Board claims in its brief that "procedures will be available for resolving the unions' disputes, if the parties are unable to have such disputes permanently resolved by submission to the new Joint Board".

This record, as now developed, particularly by the remand hearing is clear that the alleged new Joint Board will not be able to resolve this long-standing and continuous, among dispute, for/other reasons, the Employers will not go to the Joint Board, on which they have no representatives and which it had no part in establishing. It is only the authorized agency of the United States government, authorized by the Congress, to-wit, the National Labor Relations Board, pursuant to a national labor policy established by the Congress of the United States (Section 10(k) of the National Labor Relations Act as amended) that this dispute can be resolved and labor peace established in the Specialty Rigging Industry in Michigan.

As Board member Jenkins said, "This Board, it appears from the evidence offered on remand, is the only forum which presently can make an effective decision" (emphasis added).

REPEAT, THE BOARD'S OWN RULES AND REGULATIONS DO NOT PERMIT
AN EX PARTE ALLEGED SETTLEMENT AGREEMENT INVOLVING A 10(k)
HEARING

At pages 56-58 of the Employers' initial brief, it was made quite clear that under its own rules and regulations, the National Labor Relations Board had no authority in a Section 10(k) hearing to accept an ex parte settlement agreement, particularly after the parties have completed the hearing and submitted their briefs to the Board for "determination", and, further, it was made clear that decisions of this Court would not permit such an ex parte settlement in a 10(k) hearing, as a 10(k) hearing is not an adversary proceeding involving Board advocacy.

The only attack that the Board chose to make on this proposition is a statement made in footnote 16 found at page 13 of the brief wherein the Board charges that Section 101.32 of its statement of procedure incorporates 101.7 by reference. But Section 101.7 only refers to settlements "before any complaint is issued or other formal action taken". It is interesting to note that Section 109.9 of the same statement of procedure refers to settlement after issue of complaint which was the procedure that the Board attempted to follow here. It is further interesting to note that Section 101.9 is specifically not incorporated in Section 101.32, as being applicable to 10(k) hearings.

Thus, the Board's footnote 16 is an incorrect statement and the Board knows that it had no authority to enter into this settlement. In passing, we call to the

attention of the Court that the Third Circuit, on February 3, 1966, in Leeds and Northrup Company vs. NLRB, 53 Labor Cases, Paragraph 11060 has again criticized and limited the Board's right to settle unfair labor practices over the protests of the charging party without an evidentiary hearing. We further point out that the so-called hearing in this case was contrary to due process because the Board based its decision on an event that was not even part of the record.

Finally, the Board, in its brief, would have this Court believe that it had the right to enter into this ex parte alleged settlement agreement of May, 1965, because all we are dealing with here is an unfair labor practice. This is not true. Under the statutory scheme, if the Board finds within its discretion (the type referred to in Herzog vs. Parsons, 86 US App. 198; 181 F2d 781) that there is a reasonable cause to find, following a charge, that an 8(b)(4)(D) violation has occurred, and there is no settlement of it and the parties have not agreed upon methods for the voluntary adjustment of the dispute, then the Board must invoke a 10(k) hearing. The discretion ends here. For, pursuant to Section 10(k), the Board must determine the dispute. The question of an unfair labor practice complaint only comes into play after the Board makes a determination and the losing union refuses to comply. Then the Board proceeds as in any other unfair labor practice complaint case and has a hearing and makes a decision and seeks enforcement of its order in an appropriate Court of Appeals. This whole statutory scheme is explained by the Third Circuit in NLRB vs.

Local 825, International Union of Operating Engineers, 326
F2d 213 at 216.

This difference in statutory scheme between jurisdictional disputes and unfair labor practices explains why the rules and statements of procedure of the Board affecting unfair laobr practices and their settlements are quite different from the rules and statements of procedure of the Board affecting 10(k) jurisdictional dispute hearings.

The fact of the matter is that under its own rules and regulations the Board cannot settle a jurisdictional dispute once the requirements of Section 10(k) have been met and hearing has been held.

Furthermore, as indicated here, Millwrights 1102 have repudiated their alleged settlement agreement.

CONCLUSION

For the reasons set forth herein, and in our initial brief, particularly coupled with the facts developed in the remand hearing, Petitioners urge this Court to follow the recommendations of Board member Jenkins and set aside the order of the Board dated August 16, 1965 and direct the Board to make a determination and assignment of the work in dispute between Riggers Local 575 and Millwrights Local 1102 in the Specialty Rigging Industry in Michigan in accordance with Section 10(k) of the Act as interpreted by the Supreme Court of the United States in CBS and in accordance with the agreement on the record herein made by all

the parties as apparently reaffirmed by Millwrights
Local 1102's brief submitted to the Board dated February
8, 1966.

Respectfully submitted,

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EMPLOYERS' APPENDIX A
RIGGERS REMAND EXHIBIT '62

<u>CHARGED PARTY</u>	<u>CHARGING PARTY</u>	<u>DATE CLOSED</u>	<u>ACTION</u>
<u>Millwrights' Local Union No. 1102, United Brother- hood of Carpenters & Joiners of America, AFL and Commercial Contracting Corpora- tion.</u>	<u>Victor J. ... Atty.</u>	<u>7-11-51 9-20-51</u>	<u>10-26-52 Withdrawn</u>
<u>Millwrights Local 1102, United Brotherhood of Carpenters & Joiners of America, AFL-CIO</u>	<u>Don Cartage Co., Inc.</u>	<u>7-CD-26 10-11-57</u>	<u>2-20-61 Dismissed</u>
<u>United Brotherhood of Carpenters and Joiners of America, AFL-CIO</u>			
<u>United Brotherhood of Carpenters and Joiners of America, AFL-CIO Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinity</u>			
<u>Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO</u>	<u>Dearborn Machinery- Movers Company, Inc.</u>	<u>7-CD-27 10-14-57</u>	<u>10-31-57 Withdrawn</u>
<u>United Brotherhood of Carpenters and Joiners of America, AFL-CIO</u>			
<u>United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinity</u>			
<u>Millwrights Local 1102, United Carpenters and Joiners AFL-CIO and Me. , Inc. Agent (General Riggers and Erectors, Inc.)</u>	<u>Donald J. ... Atty.</u>	<u>7-CD-34 7-15-59</u>	<u>3-9-62 Withdrawn</u>
<u>Millwrights Local 1102 of Millwrights Local of The Carpenters District Council of Detroit, Wayne and Oakland Counties and Vicinities, et al (General Riggers and Erectors, Inc.)</u>	<u>General Riggers and Erectors, Inc.</u>	<u>7-CD-37 10-2-59</u>	<u>3-9-62 Withdrawn</u>

<u>CHARGED PARTY</u>	<u>CHARGING PARTY</u>	<u>DATE FILED</u>	<u>DATE CLOSED</u>	<u>ACTION</u>
Local 1102 of Millwrights Local of The Carpenters District of Detroit, Wayne and Oakland Counties and Vicinities, et al	Almon F. R. Clark	7-CD-44(1)	3-7-62 12-13-60	Withdrawn
Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO	Gale Industrial Rigging & Erecting Co.	-	10-1-60	Withdrawn
Millwrights Local Union 1102 of the Carpenters District Council of the United Brotherhood of Carpenters and Joiners of America, AFL-CIO	Commercial ing Co.	-	7-10-66 2-1-64	Dismissed
United Brotherhood of Carpenters and Joiners of America, AFL-CIO, Millwrights' Local 1102	Detroit Millwrights Erecting Co.	7-CD-100(4)	4-20-65 5-12-64	Withdrawn
Millwrights Local Union 1102, United Brotherhood of Carpen- ters and Joiners of America, AFL-CIO	Don Campbell	-	-102 5-10-64	Dismissed
Millwrights Local Union 1102, United Brotherhood of Carpen- ters and Joiners of America, AFL-CIO	Dobson	-	-103 9-1-64 -34	Withdrawn
Millwrights Local Union 1102, United Brotherhood of Carpen- ters and Joiners of America, AFL-CIO	Dobson	7-CD-124(2)	5-21-65 1-18-65	Settlement
Millwrights Local Union 1102, United Brotherhood of Carpen- ters and Joiners of America, AFL-CIO	Dobson Harry Hart	7-CD-129	7-9-65 4-26-65	Dismissed

<u>CHARGED PARTY</u>	<u>CHAR- TERED PARTY</u>	<u>C/C</u>	<u>DATE CLOSED</u>	<u>ACTION</u>
Millwrights Local Union 1102, United Brotherhood of Carpen- ters and Joiners of America, AFL-CIO	Thomas Goodfellow, Inc.	7-CD-132 5-13-65	9-13-65	Withdrawn
Millwrights Local 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO	Claude Rice, d/b/a Rice's Bowline	7-CD-140 8-13-65	8-23-65	Withdrawn

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<u>CASE NAME</u>	<u>CASE NO.</u>	<u>ACTION</u>
Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (International Industrial Riggers and Erectors)	7-CD-146 11-24-65	Open
Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Gale Industrial Rigging & Erecting, Inc.)		Open
Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (International Industrial Contracting Corporation)	7-CD-150 11-25-65	Open
Millwrights Local Union 1102, United Brotherhood of Carpenters and Joiners of America, AFL-CIO (Don Cartage Company)	7-CD-151 1-12-66	Open

EMPLOYER'S APPENDIX B
FEBRUARY 18, 1966 OPINION
OF
BOARD MEMBER JENKINS

I join in my colleagues' finding that the record developed on remand shows that neither Don Cartage Company nor Michigan Cartagemen's Association was or is bound to the National Joint Board for settlement of this dispute. However, my colleagues have treated the remand order of the Court as permitting no recommendation concerning the Board's original decision in light of the evidence developed at the hearing on remand. With this I disagree.

In dissenting from the original decision not to determine this dispute, I observed that not only was the dispute of long standing, but that it was incumbent upon the Board to make a proper determination of it. The facts related by the majority herein buttress that position; they disclose that the employers were and are not bound to submit this long standing and continuing dispute to the Joint Board, and both the employers and Riggers apparently were careful to avoid doing so. This attitude can, on the evidence now before us, be expected to persist, though undercutting a principal reason for the Board's original refusal to determine the dispute, namely, the hope that the Joint Board would provide a channel for resolution of this dispute. Consequently, I see little hope for labor peace

in this area unless this Board undertakes a proper consideration of this case. This Board, it appears from the evidence offered on remand, is the only forum which presently can make an effective decision.

For the above reasons and in accordance with the terms of the remand, I would recommend to the Court that it return the case to the Board for a determination of the dispute and an award in accordance therewith.

Feb. 18, 1966

ALVIN J. RANKINS, Jr., Member
NATIONAL LABOR RELATIONS BOARD

(Emphasis added)

EMPLOYERS' APPENDIX C

CONCLUDING PARAGRAPHS OF MILLRIGHTS BRIEF
FILED WITH BOARD FOLLOWING REMAND HEARING

ON FEBRUARY 11, 1966.

We urge, therefore, that the Board quash the Notice of Hearing on the basis, in addition to the reasons set forth in our previous brief, that the Local and its agent, the Association, have agreed, as hereinabove, to subject jurisdictional claims to the limitations imposed by trade agreements such as the Dunlop Decision of 1957 and to the decision-making authority of the National Joint Board.⁹

Should the Board determine, however, that the Notice should not be quashed and proceed thereupon to determine the dispute and make an affirmative award of the work involved, we urge again that the specific work in dispute be awarded to millwrights.

In addition to the factors set forth at some length in our previous brief, we believe that the Board should consider certain matters adduced at the remand hearing. For example, with respect to the certification of 1957, we believe that the Board should recognize that its position that the certification was, in no way, an attempt "to make a jurisdictional award in the sense of job content or work assignments" is now shown, by contemporaneous evidence, to have been understood and, in fact, endorsed by the Association (Millrights Exhibit R-1).

⁹Both Dr. Dunlop and Local 575 business manager Allen, it will be recalled, testified to the use of the National Joint Board's processes by Association members (Tr. 2575, 3736, 3737, 3739).

Finally, the Board, in considering the standards suggested by the Supreme Court in the CBS case and applying its own experience and common sense, should give great weight to the decision of the Appeals Board recently established under the Revised Plan for the Settlement of Jurisdictional Disputes in the Building and Construction Industry (Board Exhibit 5). It is, of course, the latest in a series of decisions, local and national, dating back to at least 1954, some of which were introduced at the original hearing, in which a variety of agents of both international unions, tradesmen and union officials of other crafts, and professional arbitrators have uniformly awarded work such as that in dispute here to the millwrights. But, of course, it is more. It is the carefully considered and carefully enunciated opinion of men much of whose lives is and has been spent considering, studying and deciding jurisdictional questions in the construction industry. If impartial voluntary systems for the adjustment of such disputes are to be encouraged, such decisions must be accorded the great weight to which their genesis entitles them.

Therefore, we urge the Board either (1) quash the Notice of Hearing or (2) award the work in dispute to

millwrights.

Respectfully submitted,

SCHWARTZ, O'HARE, SHARPLES & FOLEY
BOAZ SIEGEL, Counsel

By: /s/ Holland R. O'Hare
Holland R. O'Hare

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Dated: February 8, 1966.

EMPLOYERS' EXHIBIT D

PART OF PAGE 4765 OF RECORD REPORTING TESTIMONY
OF R. ROYCE RICHARDS, GENERAL MANAGER OF DON
CARTAGE COMPANY

"Q At this time, February 1, 1966, you, Don Cartage Company, as an employer, do you find it more acceptable that you go to the National Joint Board and follow that procedure rather than submit your dispute to the National Labor Relations Board under section 10(k)?

A No, I don't....

"Q Would the submission of this dispute to the National Joint Board be acceptable to Don Cartage Company as a resolution of this jurisdictional dispute?

A Definitely not."

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